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## **The International Covenant on Economic Social and Cultural Rights:**

### **A Critical Examination of the Relative Importance of Resource Constraints on Benchmarks And Benchmarking Processes in The African Context**

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Research dissertation presented for the approval of Senate in fulfilment of part of the requirements for the Master of Philosophy in approved courses and a minor dissertation. The other part of the requirement for this qualification was the completion of a programme of courses.

I hereby declare that I have read and understood the regulations governing the submission of Master of Philosophy dissertations, including those relating to length and plagiarism, as contained in the rules of this university, and that this dissertation conforms to those regulations.

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**October 5, 2007**

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## **ABBREVIATIONS**

CHR- Commission on Human Rights

CESCR- Committee on Economic Social and Cultural Rights

ECOSOC- Economic and Social Council

ESCR- Economic Social and Cultural Rights

GA- General Assembly

HDI- Human Development Index

HRC-Human Rights Committee

IBHR- International Bill of Human Rights

ICCPR- International Covenant on Civil and Political Rights

ICESCR- International Covenant on Economic Social and Cultural Rights

IMF- International Monetary Fund

UDHR- Universal Declaration of Human Rights

UN- United Nations

UNDP- United Nations Development Program

SG- Secretary General (UN)

WHO-World Health Organization

# CHAPTER 1: INTRODUCTION TO THE STUDY

## 1.1 INTRODUCTION

Ripping away colonial ties and bursting into an era of independence, freedom and development, African states welcomed the international movement for the development of a global human rights system in the 1950s and 60s. The pillars of this system ushered in rights that, it was hoped, would fully sever the stronghold of colonialism over African economies, cultures and governments.<sup>1</sup> Accession, ratification, and translation of the instruments defining this system meant for millions of Africans the right to education, to vote, to self determination, to culture, and to development. Thus, with the terror and after effects of colonial subjugation, poverty, oppression and gross underdevelopment in the not so distant past, many African states signed on to the hope of their enablement to create non-discriminatory, fair, just, equitable and prosperous societies.<sup>2</sup> Today, forty years into the creation of this hope, the continent is only thirteen years removed from the horror of the Rwandan genocide and the fall of the dehumanizing apartheid regime. Situations in Sudan, Zimbabwe, the Democratic Republic of the Congo and Swaziland are but a few of the current crises that characterize and testify to the consistent singing of this hope in Africa. Conditions of humanity in Africa have continued to plummet as social and political unrest, conflicts and wars arise that are fuelled by the remnants of

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<sup>1</sup> See Lyon, B., "Discourse in Development: Viewing the United Nations Committee on Economic, Social and Cultural Rights Through the Post Colonial Lens" (2003) Paper 11, *Villanova School of Law Working Paper Series*; Ibhawoh, B., "Between Culture and Constitution: Evaluating the Cultural Legitimacy of Human Rights in the African State" (2000), Vol. 22, *Human Rights Quarterly*, 842-843 and 846-847; Oloka-Onyango, J., "Beyond the Rhetoric: Reinvigorating the Struggle for Economic and Social Rights in Africa", (1995), Vol. 26 #1, *University of Minnesota Human Rights Library* and Makinda, S., "Democracy and Multi-Party Politics in Africa"(1996), Vol. 34 (4) *Journal of Modern African Studies*, 555-573.

<sup>2</sup> See Table 1, African State Parties to the ICESCR, Chapter 3, 2.

Approximately 58 percent of African State Parties signed and or ratified the treaty within the first 15 yrs of its entry into force.

\*Denotes African State Parties accession to the Covenant between 1976 and 1991.

colonialism, desperation over scarce resources and highly coveted positions of unfettered, unchallenged power and leadership.<sup>3</sup>

Despite that the overwhelming majority of African States are signatories<sup>4</sup> to the International Covenant on Economic, Social and Cultural Rights<sup>5</sup>, one of the three pillars of the International Bill of Human Rights<sup>6</sup>, basic rights, such as that to health, education and the continuous improvement of living conditions, are yet to fully take root and be realized in the majority of these countries.<sup>7</sup> African leaders have cited a crisis of available resources as the major culprit of this<sup>8</sup> while the international community has criticised African States as not being serious enough about the protection and promotion of ESCRs

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<sup>3</sup>Don Najira, D.C. “The Protection of Human Rights: Meaning and Application in the African Context” in Symonides, J. *Human Rights: International Protection, Monitoring, Enforcement* (2002), 213-218, Shedrack, A.C., “Reclaiming Humanity: Economic, Social and Cultural Rights as the Cornerstone of African Human Rights”, (2002) *Yale Human Rights and Development Law Journal*, 181-183; also see UNDP’s Indicators by Tables: Monitoring Human Development: Enlarging People’s Choices at [http://hdr.undp.org/hdr2006/statistics/indicators/indicators\\_table.cfm](http://hdr.undp.org/hdr2006/statistics/indicators/indicators_table.cfm) for water, sanitation, nutrition status, life expectancy and human poverty indices.

<sup>4</sup> See Table 1.

<sup>5</sup> The International Covenant on Economic Social and Cultural Rights, GA Resolution 2200A (XXI) 16 December 1966, entered into force 3 January 1976 (hereinafter “the ICESCR” or “the Covenant”).

<sup>6</sup> The International Bill of Human Rights (hereinafter “IBHR”) is comprised of the Universal Declaration of Human Rights (Universal Declaration of Human Rights, GA Resolution 217A (III) of 10 December 1948 UN Doc. A/810; hereinafter “the UDHR”), the International Covenant on Civil and Political Rights (The International Covenant on Civil and Political Rights GA Resolution 2200A (XXI) 16 December 1966, entered into force 26 March 1976; hereinafter “the ICCPR”) as well as the International Covenant on Economic Social and Cultural Rights (The International Covenant on Economic Social and Cultural Rights, GA Resolution 2200A (XXI) 16 December 1966, entered into force 3 January 1976; hereinafter “the ICESCR” or “The Covenant”).

<sup>7</sup> See UNDP’s Indicators by Tables: Monitoring Human Development: Enlarging People’s Choices at [http://hdr.undp.org/hdr2006/statistics/indicators/indicators\\_table.cfm](http://hdr.undp.org/hdr2006/statistics/indicators/indicators_table.cfm) for water, sanitation, nutrition status, life expectancy and human poverty indices.

<sup>8</sup> Odinakulu, C.A., “Analysis of Paralysis or Paralysis by Analysis: Implementing Economic, Social and Cultural Rights Under the African Charter of People’s and Human Rights”, (2001), vol. 23, *Human Rights Quarterly*, 327-369; Leopold Senghor’s (founder of Senegal) comment that “human rights begin with breakfast” “became the slogan of some developing country governments, who argued that a new international economic order was a prerequisite for the adequate realisation of human rights.” From: Plant, R. “Human rights, decent work and the role of labour standards in international development policies a concept paper on rights-based thinking, as applied to the ilo’s standard-setting activities” at: <http://training.itsilo.it/decentwork/staffconf2002/presentations/planthrlabour02.doc>

and ignoring the obligations associated with their implementation and enforcement.<sup>9</sup> While there are valid and factual examples in support of both these positions, to understand which factor is the main constraint, it must be assessed whether the benchmarks set by the Covenant, the Committee on Economic, Social and Cultural Rights (CESCR) and the international community to measure States' progress towards the full realization of ESCRs are impacted by a crisis of available resources and or political will within the African socio-economic and political context. Though human rights over the last sixty years have gradually come to be regarded as universal, criticism of the very low levels of human development and the persistent non-realization of ESCRs in Africa make it is necessary to look at the effectiveness of the benchmarks and benchmarking processes set to measure States' compliance with obligations towards the realization of ESCRs by examining whether they are significantly affected by a constraint in available resources or political will in African States.

## **1.2 OBJECTIVE AND SIGNIFICANCE OF STUDY**

There is currently no literature which looks specifically at the relative roles of resources and political will in the functioning of the benchmarks set by the ICESCR for measuring State obligation function within the African context. Current literature on measuring positive State obligations and compliance with the Covenant suggests broadly that standards for measuring positive obligations and the implementation and realization

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<sup>9</sup> See Human Rights Watch, 2001 World Report: Africa at <http://www.hrw.org/wr2k1/africa/index.html> and Amnesty International: African Union Summit in Accra: Time for African leaders to make human rights Count and Implement Their Promises and Commitments at: <http://web.amnesty.org/library/Index/ENGIOR630032007>



of ESCRs are not affected by States' varying socio-economic and that they can be adequately undertaken in a variety of political contexts.<sup>10</sup> In light of the assertion of the crisis of available resources in Africa and criticisms of the gross non-realization of ESCRs in Africa, this study will examine the extent to which resources constrain States in fully engaging with the benchmarking processes established by the Covenant, the CESCER and, ultimately, the full realization of ESCRs. It is envisaged that the result of this study will illuminate broader issues surrounding current benchmarks and benchmarking processes established by the ICESCER and the CESCER and, ultimately, the realization of ESCRs in Africa.

### **1.3 METHODOLOGY AND CHAPTER OUTLINE**

The study commences in Chapter one with the background of ESCRs. This includes a historical background of the development of ESCRs and a sectional overview of the Covenant.

Chapter Two begins by establishing constituents of effective benchmarking to provide a framework for analysing the benchmarks and benchmarking processes established by the committee and the Covenant. This entailed looking at the concept of “benchmarks” as is used in the human rights context and thence at the benchmarks expressed and benchmarking processes established by the Covenant as well as those developed in relevant discourse since its entry into force which further expound the nature and scope of legal obligations under the Covenant. Article 2(1) of the Covenant,

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<sup>10</sup> See Limburg Principles on the Implementation of the Covenant on Economic, Social and Cultural Rights, (1987), Vol. 9, *Human Rights Quarterly*, 124, para 6, and The Committee on Economic Social and Cultural Rights, General Comment No. 3, The Nature of State Parties Obligation (Art. 2.1 of the Covenant) UN Doc HRI\GEN\1\Rev.1 at 45 (1994) 14 of December 1990, para 8.; hereinafter “General Comment No. 3”.

the Limburg Principles<sup>11</sup> and the Maastricht Guidelines<sup>12</sup> as well as some of the General Comments of the CESCR were reviewed and critically analysed. Their strengths and weaknesses were assessed in order to establish the potential impact of the constraint of resources and political will as States engage with them.

As the CESCR has indicated that the State reporting system is essential to national benchmarking<sup>13</sup>, chapter three of the study firsts looks at the general role of and issues associated with State reporting as a benchmarking process. This sets the stage for the discussion on State reporting and national benchmarking and the potential impact of the crisis of available resources and political will on the efficacy of the process within the African context. The second half of the chapter looks briefly at the role of adoption and ratification of the Covenant within the African context to establish the economic, social and political relevance and role of the ICESCR in Africa. The chapter then examines more extensively African States' compliance with the State reporting procedure and, consequently, the level of their engagement with the CESCR in the establishment of their national benchmarks. The United Nations Treaty database served as a portal for primary source information for dates of signature and ratification of the Covenant as well as data on the status of State reports submitted to the CESCR.

It is hypothesized that the issues which are inherent to the State reporting process, are further exacerbated in the African context by the fact that it requires significant political will to submit reports and complete the reporting process. Data from the UN

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<sup>11</sup> Limburg Principles on the Implementation of the Covenant on Economic, Social and Cultural Rights, (1987), Vol. 9, *Human Rights Quarterly*, 122-135.

<sup>12</sup> The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, (1998), Vol. 20, *Human Rights Quarterly*, 691-705.

<sup>13</sup> The Committee on Economic Social and Cultural Rights, General Comment No. 1, "Reporting By States Parties", 24 February 1989, para 6; hereinafter "General Comment No. 1".

Treaty database indicates that the majority of African States do not report or complete the process as the data demonstrates. African States, as a result of not reporting, do not engage with the CESCRR and are therefore not engaged with it in national benchmarking processes. Chapter three thus concludes that State reporting, as a benchmarking process, is significantly impaired in Africa because it requires the application of a high degree of political will.

Chapter four tests this hypothesis by looking at the relationship between resource constraints, compliance with the obligation to submit periodic reports and levels of human development (as an indication of the realization of ESCRs). The basic objective of the comparability between African and Commonwealth Caribbean States is to test the reasonableness of the assertion of chapters two and three that benchmarks and benchmarking processes towards the realization of ESCRs are less impacted in the African context by the level of resources available to the State than by political will. To this end, data from the UNDP's Human Development Index<sup>14</sup> was compiled. African States parties' ranks were extracted from the index and thence used to reaffirm the position that African States persistently lag behind the rest of the world in the realization of ESCRs. The second half of the chapter looks at States with comparable levels of economic resources in the English speaking Caribbean<sup>15</sup> to determine if States with similar resource based constraints demonstrate similar levels of compliance with the

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<sup>14</sup> "The HDI – human development index – is a summary composite index that measures a country's average achievements in three basic aspects of human development: longevity, knowledge, and a decent standard of living. Longevity is measured by life expectancy at birth; knowledge is measured by a combination of the adult literacy rate and the combined primary, secondary, and tertiary gross enrolment ratio; and standard of living by GDP per capita (PPP US\$)." Human Development Reports, [http://hdr.undp.org/reports/global/2003/indicator/indic\\_242\\_1\\_1.html](http://hdr.undp.org/reports/global/2003/indicator/indic_242_1_1.html).

<sup>15</sup> The English Speaking Caribbean or Common Wealth Caribbean is chosen because of its historic and economic comparability to Africa as well as availability of information to the writer. States in the Common Wealth Caribbean are: Antigua and Barbuda, Bahamas, Barbados, Dominica, Grenada, Guyana, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines and Trinidad and Tobago.

obligation to submit periodic reports and similar levels of human development. It is shown that levels of human development and compliance with the obligation to submit periodic reports are not significantly affected by the availability of economic resources. Data from the UN Treaty Database, the UNDP's HDI and world GDP (PPP) figures from the IMF are used to substantiate this comparative discussion.

As it is shown that compliance with the obligation to submit periodic reports and levels of human development are not significantly impacted by the level of available economic resources, it is concluded that they, and ultimately the realization of ESCRs in Africa are more significantly impacted by political will. Chapter five briefly summarizes the previous chapters and this conclusion and proposes the broader implications of this.

## **1.4 BACKGROUND OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

### **1.4.1 Historical Background of the Development of Economic, Social and Cultural Rights**

Since the end of WWI, the international community has consistently struggled to reconcile notions associated with the concept of 'Human 'Rights' with the role of states in the protection and promotion of these rights. States historically have been unswervingly reluctant to engage in any sort of conduct or agreement that could possibly violate their sovereign right to determine and regulate all the affairs within their territory. This reluctance, and in most cases, the outright refusal to have this right limited, has been a constant thorn in the side of the international community as attempts are made to improve the lives of millions across the globe.<sup>16</sup>

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<sup>16</sup> Mower Jnr., A. *International Cooperation for Social Justice: Global and Regional Protection of Economic/Social Rights*, (1985),10-11.

With the gross atrocities of WWII in the social, political and cultural backdrop, the international community created the UN Charter which established the UN in 1945<sup>17</sup> and ushered in a new era in the promotion and protection of human rights. This charter, though containing a preamble and seven articles dealing with human rights<sup>18</sup>, “...did not contain a specific definition of human rights nor specific arrangements for their implementation.”<sup>19</sup> It did, however, create an institution which, through various other treaties, declarations and customary international law, would develop a global human rights system that would further question, challenge and develop the definition of and discourse on human rights and the undertaking of the promotion, protection and enforcement of them by the institution as well as by the international community.<sup>20</sup> At the core of this global system is the International Bill of Human Rights (IBHR).

The Economic and Social Council (ECOSOC)<sup>21</sup> created a body, the Commission on Human Rights (CHR)<sup>22</sup>, which was charged with dealing with these issues specifically through the development and implementation of an international Bill of Rights. Created over a period of twenty years, it now encompasses the UN’s three pronged approach to the global protection and promotion of human rights. The three legs of this system include the Universal Declaration of Human Rights<sup>23</sup>, the International Covenant on Civil

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<sup>17</sup> UN Charter, 26 June 1945, entered into force 24 October 1945, preamble.

<sup>18</sup> Ibid, preamble, article 1(3), article 13(1b), article 55, article 56, article 62(2), article 68, article 76(c).

<sup>19</sup> Mower Jr., A.), 11.

<sup>20</sup> Other such Covenants include: The Convention on the Elimination of All Forms of Racial Discrimination (1965), The Convention on the Elimination of All Forms of Discrimination Against Women (1980), The Convention on the Rights of the Child (1989), and the International Convention Against Torture (1987).

<sup>21</sup> ECOSOC was established under the UN Charter article 7(1) as the principal organ to coordinate economic, social, and related work of the 14 UN agencies, 10 functional commissions and five regional commissions.

<sup>22</sup> The CHR was established by ECOSOC acting under article 68 of the UN Charter, at its first meeting on 10 December 1946. The Commission on Human Rights has been dissolved and the Human Rights Council, established by GA resolution 60/251 15 March 2006, is now charged with addressing human rights violations.

<sup>23</sup> Universal Declaration of Human Rights (1948).

and Political Rights<sup>24</sup> and the International Covenant on Economic, Social and Cultural Rights<sup>25</sup>. Together they bind states through the force of their great moral authority, ratification/accession processes and customary international law to certain standards and duties. The UDHR, though merely a declaration and therefore not binding (at the time), it set the stance of the international community with regards to human rights primarily by expressing the moral foundation of human rights and basic fundamental freedoms as well as by enumerating them. But, while finally expressing these fundamental rights, the UDHR was still a far cry from crystallizing what these rights entailed and how they were to be promoted, protected and enforced, particularly by states. It lists mostly civil and political rights<sup>26</sup> and economic, social and cultural rights<sup>27</sup> and a limited number of group rights<sup>28</sup> as most of the rights listed are individual rights. It was, however, envisaged that the CHR would tackle issues surrounding the development and enforceability of these rights in the form of a binding covenant to which states would formally commit and, therefore, be bound to. However, an ideological battle, separated along a Western versus Eastern bloc delegations line, ensued within the commission regarding the structure of this covenant. The result of this confrontation was the birth of two covenants; the ICCPR and ICESCR.<sup>29</sup>

The Western bloc delegations argued for two separate covenants on the basis that the legislative as well as implementation measures required for dealing with and realizing ESCRs were entirely different from those required for civil and political rights. The

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<sup>24</sup> The International Covenant on Civil and Political Rights (entry into force 1976).

<sup>25</sup> The International Covenant on Economic Social and Cultural Rights (entry into force 1976).

<sup>26</sup> Ibid, articles 3-21.

<sup>27</sup> Ibid articles 17, 22-27.

<sup>28</sup> The UDHR makes references to men (Preamble and Article 16(1)) and women (Preamble and Article 16(1)), the family (Article 12, 16(1) 16(3), 23(3) 25(1)) as well as racial (Article 26(2)) and religious groups (Article 26(2)).

<sup>29</sup> Mower Jnr., A., 15-18.

inclusion of ESCRs, it was believed, would therefore produce an instrument that could not essentially be put into effect. The Eastern bloc delegations argued for the preservation of the balanced conception of the human as is expounded in the UDHR and stressed the indivisibility of ESCRs and civil and political rights.<sup>30</sup> After much debate within the commission and the various subgroups involved with the drafting of the covenants, the GA's Third Committee recommended that the CHR draft two separate covenants which would be submitted and opened for signature at the same time.<sup>31</sup> The ICCPR and the ICESCR were thus birthed on 16 December 1966 and entered into force the 26 March 1976 and the 3 January 1976 respectively.

Prior to their finalization, the General Assembly (GA) stressed that though separate, the rights espoused in both Covenants should be regarded as interconnected and interdependent.<sup>32</sup> It is maintained that while this was a seemingly strong base to build the interpretation and implementation of human rights standards, the final result has echoed much of the Western bloc's anxieties, and has since handicapped the international community's ability to truly promote, protect and enforce ESCRs. The idea that ESCRs are of a fundamentally different nature from civil and political rights, particularly with regards to their implementation and enforceability survived the ideological battle between the East and the West during the drafting process and remains today of the major

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<sup>30</sup>For further discussion on the development of two separate covenants on civil and political and ESCR see: Craven, M., "The International Covenant on Economic, Social and Cultural Rights" in Hanski, R. & Suksi, M. *An Introduction to the International Protection of Human Rights* (1999), 101-102, Mower Jnr., A., 15-18 and Dennis, M. & Stewart, D., "Justiciability of Economic, Social and Cultural Rights: Should there be an international complaints mechanism to adjudicate the rights to food, water, housing and health" (2004), Vol. 98, *American Journal of International Law*, 476-482.

<sup>31</sup> Mower Jnr., A., 17-18.

<sup>32</sup> Preparation of Two Draft International Covenants on Human Rights, GA Resolution 543 (VI) 5 February 1952.

impediments to realization of economic social and cultural rights.<sup>33</sup> Civil and political rights have since been given more attention by human rights activists and groups, NGOs, governments and at the UN level through the work and decisions of the quasi-judicial body, the Human Rights Committee<sup>34</sup>.<sup>35</sup> Thus, while ESCRs are legally elevated to the same binding level as civil and political rights, they are, in practice far less recognized as justiciable and capable of implementation due to the persistent belief that ESCRs are not immediately realizable, too resource intensive and non-enforceable.

#### 1.4.2 Introduction To and Overview of The International Covenant On Economic, Social And Cultural Rights

Ultimately, the Covenant is the only universal human rights instrument which deals extensively with the whole range of economic, social and cultural rights, and it is primarily by reference to the Covenant that this category of rights is to be understood.<sup>36</sup>

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<sup>33</sup> See: Alston, P. &Quinn, G., “The Nature and Scope of States Parties' Obligations under the International Covenant on Economic, Social and Cultural Rights” (1987) Vol. 9(2) *Human Rights Quarterly*, 156- 229, Leckie, S., “Another Step Towards Indivisibility: Identifying the Key Features of Violations of Economic, Social and Cultural Rights (1998) Vol. 20, *Human Rights Quarterly*, 81-124 and Scott, C., “Reaching Beyond (Without Abandoning) the Category of “Economic, Social and Cultural Rights” (1999), Vol. 21(3) *Human Rights Quarterly*, 633-660 for more details on current debates on the status of economic, social and cultural rights.

<sup>34</sup> The Human Rights Committee is the body of independent experts that monitors implementation of the ICCPR by its State parties. The committee monitors compliance through State reports which each party is obliged to submit regularly on how the rights are being implemented. The Committee is also equipped to handle interstate as well as individual complaints as is provided for by article 41 of the Covenant and the First Optional Protocol to the Covenant respectively. Through these mechanisms, particularly the individual complaints mechanism, the Committee has developed jurisprudence on the enforcement on Civil and Political Rights.

<sup>35</sup> See: Ferina Tinta, M., “Justiciability of Economic, Social and Cultural Rights in the Inter-American System of Human Rights: Beyond Traditional Paradigms and Notions” (2007), Vol. 29, *Human Rights Quarterly*, 434 and footnotes 8 and 9, and Civil and Political Rights: The Human Rights Committee, Fact Sheet No. 15 at [www.unhchr.ch/tbs/doc.nsf](http://www.unhchr.ch/tbs/doc.nsf).

Worldwide NGOs such as Human Rights Watch have historically been more concerned with the protection of civil and political rights than with economic, social and cultural rights. In recent times Human Rights Watch has admitted to have started paying more attention to addressing ESCRs violations. ([www.hrw.org/doc/?t=esc](http://www.hrw.org/doc/?t=esc))

<sup>36</sup> Craven, M., 105.



The covenant, in its six sections, reaffirms the moral basis for human rights as being founded in the inherent dignity of the human person, reiterates certain civil and political rights as well as for the first time, articulates ESCRs and lays the foundation for their interpretation and implementation. These six sections are broken into a preamble and 31 articles which are grouped in five parts.

The preamble, almost exactly worded<sup>37</sup> as that in the ICCPR, provides a framework for interpreting the rights to follow in Parts I through IV and asserts their great moral importance by echoing the idea of the inherent dignity of the human person found in the UDHR as the basis for all human rights. It, more importantly, underscores the indivisibility of civil and political rights and ESCRs by stating that the ideal of free human beings enjoying freedom from want can only be enjoyed if conditions are created whereby everyone can enjoy both ESCRs as well as civil and political rights. This essentially suggests that both the ICCPR and IESCR should be interpreted and applied jointly and that the rights expounded in both instruments are therefore inextricably linked.<sup>38</sup>

Part One of the covenant solely consists of article one and is exactly worded as article one of the ICCPR. In three small sub-sections, it asserts the right of all peoples to political association, self determination<sup>39</sup> and the free disposition of their natural wealth and resources. Though similarly worded to Part one of the ICCPR and includes the same rights, these rights are to be construed as economic rights and or conditions necessary for the realization of ESCRs. Further, it can be said that the inclusion of self-determination in

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<sup>37</sup> The wording is exactly the same except for the inclusion of the words “civil and political freedom” in the third stanza of the ICCPR.

<sup>38</sup> Craven, M., 103.

<sup>39</sup> Self determination is largely confined to the colonial context in sub-section 3.

the ICESCR can be said to be a necessary context for the realization of economic, social and cultural rights.<sup>40</sup>

Part two, consisting of articles two to five, further sets the context for the interpretation and application of the covenant. Article two, which is of particular importance to this study, espouses in three sub-sections, the obligation of states parties to take steps individually and through international assistance and co-operation to the maximum of available resources towards the progressive full realization of the rights recognized in the covenant<sup>41</sup>. It continues stating that the application of these rights will be undertaken non-discriminatorily<sup>42</sup> and that developing countries with due regard to their economies have the right to decide to what extent they are able to extend economic social and cultural rights to non-nationals.<sup>43</sup> Craven<sup>44</sup> argues that article 2(1) reflects the belief held during the drafting process that the implementation of ESCRs could only be undertaken progressively as full implementation was beyond the means and resources of many States. This is to be revisited in chapter two.

Article three reaffirms the obligation to ensure the equal rights of men and women (placing this within the context of ESCRs) and articles four and five set the conditions for the limitations of and derogations from the provisions of the covenant.

Parts three and four of the Covenant, which span articles six to 15 and 16 to 25 respectively, comprise the core of the covenant. Of the rights mentioned in Part three are the rights to safe and healthy working conditions<sup>45</sup>, social security<sup>46</sup>, free and compulsory

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<sup>40</sup> Craven, M., 103.

<sup>41</sup> ICESCR, Article 2(1).

<sup>42</sup> Ibid, Article 2(2).

<sup>43</sup> Ibid, Article 2(3).

<sup>44</sup> Craven, M., 107.

<sup>45</sup> Ibid, Article 7(b).

<sup>46</sup> Ibid, Article 9.

primary education<sup>47</sup>, and an adequate standard of living including adequate food, clothing and housing, and the continuous improvement of living conditions<sup>48</sup>. Though some of the rights espoused in the Covenant are listed elsewhere such as in certain instruments of the International Labour Organisation<sup>49</sup> and the Convention on the Elimination of all forms of Racial Discrimination<sup>50</sup>, the Covenant is said to, for the first time, list a full range of ESCRs extensively and comprehensively. Also, many of the rights, particularly cultural rights, listed in the Covenant made their international treaty debut as a result of this Convention. Rights such as that to health, housing and cultural life were, at the time, not found elsewhere.<sup>51</sup>

Part four can be called the machinery of the covenant as it sets forth the method for gauging compliance with and the enforcement of the treaty, the state reporting system,<sup>52</sup> as well as the supervisory roles of the Secretary General and the ECOSOC.<sup>53</sup> The Covenant stipulates that States, on ratifying the treaty, are to furnish reports in stages on measures they have adopted and progress made in achieving the observance of the rights recognized in the Covenant. The Committee thence reviews the report and engages the State in a series of dialogues which they deal with issues of implementation and enforcement, national benchmarking as well as make recommendations and suggestions.

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<sup>47</sup> Ibid, Article 13(2)b.

<sup>48</sup> Ibid, Article 11(1).

<sup>49</sup> International Labour Organization Convention Concerning Freedom of Association and Protection of the Right to Organize, Convention 87 adopted 9 July 1948 by the General Conference of the International Labour Organisation.

<sup>50</sup> International Covenant on the Elimination of All forms of Racial Discrimination GA Resolution 2106(XX) of 21 December 1965, entered into force 4 January 1969.

<sup>51</sup> Craven, M., 105.

<sup>52</sup> ICESCR, Articles 16-19.

<sup>53</sup> Ibid, Articles 16 and 18-22.

Part V, articles 26 to 31, details the general administrative terms and conditions of the treaty such as ratification and accession<sup>54</sup>, the treaty's entry into force<sup>55</sup>, and amendments<sup>56</sup>.

## 1.5 CONCLUSION

The ICESCR, part of the international community's wider system for the promotion, protection and enforcement of all human rights, is the only international instrument within this system that deals extensively with ESCRs.<sup>57</sup> It is thus primarily through this Covenant that the interpretation and implementation of ESCRs is to be undertaken. It is maintained that though the Covenant is an extensive assortment of rights, the broadness with which they are dealt and the weak, vague language of the obligations to undertake and enforce them is a direct result of the ideological differences that engulfed the drafting process. It is further maintained that comparisons between civil and political rights and pursuant perceptions of ESCRs as non-enforceable and not capable of immediate implementation still persist. These two issues are not only reflected in the legal and scholarly discourse developed to expound the Covenant (as well as current literature on the subject) but has also negatively affected the realization of ESCRs. This is to be further demonstrated in chapter two.

Chapter two will look critically at Article 2(1) of the Covenant and extract the most important terms and provisions of obligations. It will thence examine the benchmarks set in the Covenant itself, General Comments of the CESCR, The Limburg Principles as well as the Maastricht Guidelines for measuring States' compliance with

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<sup>54</sup> Ibid, Article 26.

<sup>55</sup> Ibid, Article 27.

<sup>56</sup> Ibid, Article 29.

<sup>57</sup> Craven, M., 105.

obligations under the Covenant. It is to be argued that the weak, vague and broad manner which the Covenant and its expounding documents frame positive obligations and the benchmarks for measuring them require significant political will.

Chapter three will focus specifically on State reporting as a benchmarking process. It will first analyze the reporting system and some of the issues that generally plague it. It will then examine compliance with the obligation to submit periodic reports and the implication of this on national benchmarking in the African context. It will be argued that the issues that plague the reporting system are further exacerbated in the African context as it requires significant political will on the part of State parties to submit reports and complete the reporting process. The chapter will then conclude by taking the position that both State reporting and the vague, imprecise and broad benchmarks set by the Covenant and its expounding documents are significantly impacted by the role of political will in African States.

Chapter four tests this assertion by looking at the relationship between resource constraints, compliance with the obligation to submit periodic reports and levels of human development (as an indication of the realization of ESCRs). It will undertake a comparative analysis of specific African and Commonwealth Caribbean States to determine if States with similar resource based constraints demonstrate similar levels of compliance with the obligation to submit periodic reports and similar levels of human development. It will be shown that levels of human development and compliance with the obligation to submit periodic reports are not significantly impacted by the level of available economic resources. This will eliminate the crisis of available resources as a significant factor affecting benchmarking processes and, ultimately, the realization of

ESCRs in Africa. It will thus be concluded that the current benchmarks for measuring State obligation to the end of the full realization of ESCRs in Africa is more significantly impacted by a lack of political will. Chapter five will briefly summarize the previous chapters and this conclusion and then propose its broader implications for the realization of ESCRs in Africa.

## **CHAPTER 2: THE NATURE AND SCOPE OF STATE PARTY OBLIGATIONS UNDER THE COVENANT**

### **2.1 INTRODUCTION**

ESCRs, since the drafting of the Covenant, have almost always been discussed, contrasted or their justiciability questioned and or refuted in direct relation to civil and political rights. The nature and scope of the legal obligations associated with these rights, likewise, have mainly been referred to or compared with those relating to civil and political rights. This referent comparison is hinged primarily on the stark differences between the manner the Covenants frame the pursuant obligations of State parties.

This chapter will present a brief historical background of the alleged differences between civil and political rights and ESCRs. It will then propose that the benchmarks for measuring positive State obligations are not significantly affected by the nature of ESCRs but rather because they are imprecise and broad and therefore require significant political will on the part of State parties to fully engage with them. It will affirm this position by first outlining the role and constituents of effective benchmarking. Using these guidelines the chapter will thence look at the text of the Covenant, several of the general comments of the CESCR, the Limburg Principles and other expounding documents and critically analyse their strengths and weaknesses as benchmarks in order to establish the potential impact of the constraint of resources and political will as States engage with them.

## 2.2 HISTORICAL BACKGROUND OF THE NATURE OF ESCRs

Alston and Quinn<sup>58</sup> observe that the most commonly drawn distinction between civil and political rights and ESCRs is between negative and positive rights. Civil and political rights are characterized as negative because the Covenant has been interpreted as primarily requiring States *not* to act in ways that violate the rights it upholds. There is thus, an obligation *not* to act counter to the provisions and purpose of the treaty. They develop this by stating that ESCRs are often regarded as positive rights because they are viewed as requiring the active intervention of governments for their realization.<sup>59</sup> The obligation therefore, of the State, is framed in a positive, interventionist way.<sup>60</sup> Consequent distinctions between the two sets of rights are that civil and political rights, because of their negative nature and the ensuing negative obligations placed on States, are considered relatively easier to define and therefore more readily enforceable and hence justiciable. ESCRs, on the other hand, because of the positive obligations and the interventionist requirement of the State, are largely “considered to be inherently intractable and unmanageable and are thus much too complex to be dealt with under the rubric of rights”.<sup>61</sup> Further, ESCRs were often seen as directives and not giving rise to any substantive or legally binding obligations.<sup>62</sup> Thus, civil and political rights were often regarded as requiring “obligations of conduct” while ESCRs required “obligations of result”.<sup>63</sup> A further distinction resulting from this positive-negative characterization is that civil and political rights are considered less costly while ESCRs are considered

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<sup>58</sup> Alston, P. & Quinn, G., 159.

<sup>59</sup> Ibid and Ferina Tinta, M., 432-433.

<sup>60</sup> Ferina Tinta, M., 433.

<sup>61</sup> Alston, P. & Quinn, G., 160.

<sup>62</sup> Ferina Tinta, M., 433.

<sup>63</sup> Ibid.



resource intensive because of the positive obligations and interventionist requirements espoused by the Covenant.

Ferina Tinta<sup>64</sup> argues that responses to these conceptions of ESCRs did two things. One, they served to assert that all human rights entailed both positive and negative obligations. Secondly, they did not succeed in breaking the positive- negative framework in which the rights were commonly discussed. She argues that in the attempt to break the positive-negative conception of the rights comparisons were often made between the two sets of rights, showing the similarities between the rights. This exercise, however, served to reinforce the idea that there were indeed two sets of rights; creating a type of “legal fiction”.<sup>65</sup> The long-term effect of this has been that the defence of ESCRs as legitimate legal rights acknowledges, to a certain extent, that they have a handicapped legal nature and problems of applicability.<sup>66</sup> This study will thus argue that the benchmarks set by the Covenant and its expounding documents to measure States’ compliance with obligations under the Covenant is, in Africa, not affected by the inherent nature of the rights per se. The benchmarks are rather affected by the combination of two things. One, that the vast majority of African States do not submit State reports and therefore do not engage with the CESCRR in processes that facilitate national benchmarking. And two, because the terms and conditions used to describe and establish benchmarks relevant to the obligations under the Covenant are vague and do not provide objective, measurable standards or criteria. These two factors, in turn, require that States engaging with the benchmarks have high levels of political will to fully interpret and engage the

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<sup>64</sup> Ibid.

<sup>65</sup> Ibid.

<sup>66</sup> Ibid.

benchmarks and consequently drive the realization of ESCRs. The latter will be addressed in the next three sections of the chapter and the former in chapter three.

## 2.3 CONSTITUENTS OF EFFECTIVE BENCHMARKING

Benchmarking, as the term is used in human rights discourse, refers to target and or goal setting which is specific to [or reflective of] a State's individual circumstances.<sup>67</sup> Since the objective of goal and target setting by the State is to get it to gauge its responsibilities, priorities and thence the rate at which it can perform its obligations, benchmarking must primarily be undertaken by the State.

With regards to international instruments such as the ICESCR, benchmarking functions at numerous levels. It not only allows States to engage with the terms and conditions of the Covenant and thence create standards that are reflective of its economic, political, social and cultural circumstances, it also (by virtue of its target setting function) is a means of monitoring and measuring States' compliance with their obligations under the Covenant. The CESCR General Comment No. 1<sup>68</sup> in paragraph six states:

A fifth objective is to provide a basis on which the State party itself, as well as the Committee, can effectively evaluate the extent to which progress has been made towards the realization of the obligations contained in the Covenant. For this purpose, it may be useful for States to identify specific benchmarks or goals against which their performance in a given area can be assessed. Thus, for example, it is generally agreed that it is important to set specific goals with respect to the reduction of infant mortality, the extent of vaccination of children, the intake of calories per person, the number of persons per health-care provider, etc. In many of these areas, global benchmarks are of limited use, whereas national or other more specific benchmarks can provide an extremely valuable indication of progress.

It is evident from this extract of General Comment No. 1 that the CESCR was cognizant of the fact that States' varying socio-economic situations render universal

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<sup>67</sup> Green, M. "What We Talk About When We Talk about Indicators: Current Approaches to Human Rights Measurement", (2001), Vol. 23, *Human Rights Quarterly*, 1080.

<sup>68</sup> The Committee on Economic Social and Cultural Rights, General Comment No. 1, "Reporting By States Parties", 24 February 1989; hereinafter "General Comment No. 1".

benchmarks useless. It thus envisioned a process whereby States would identify specific national goals with regard to the realization of the rights espoused in the Covenant. The result of this is not only to be the creation of the benchmark or a method of self evaluation for the State but also a means by which the Committee is able to evaluate a State's progress towards the realization of ESCRs. Chapman confirms this by stating that critical to the systematic monitoring of ESCRs is "the delineation of performance standards...in the form of indicators and benchmarks, making possible the identification of problems and potential major violations."<sup>69</sup> She goes further to state that "the primary use of benchmarks is to offer a tool to assess the performance of States in reaching the goals they have set for a particular interval of time as part of the process of fulfilling their obligations."<sup>70</sup> Greene states also that "...human rights benchmarks measure performance relative to individually defined standards."<sup>71</sup>

It is argued that for international instruments such as the ICESCRs States and the CESCR do this primarily through the State reporting procedure and through engaging with the Covenant and supporting literature which expound the nature and scope of their obligations under the Covenant. To explore this the rest of this chapter will look critically at Article 2(1) of the Covenant, the CESCR General Comments, the Limburg Principles and the Maastricht Guidelines as they pronounce States' obligations under the Covenant as well as develop critical criteria and principles for their interpretation, implementation, and enforcement. In their latter role, they have developed "goals" and "targets" with regard to States' obligations under the Covenant. Based on the context set by General

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<sup>69</sup> Chapman, A., "Indicators and Standards for Monitoring Economic, Social and Cultural Rights", (2000)UNDP Global Forum at: [www.hdr.undp.org/docs/events/global\\_forum/2000/chapman.pdf](http://www.hdr.undp.org/docs/events/global_forum/2000/chapman.pdf), 2.

<sup>70</sup> Ibid.

<sup>71</sup> Green, M.,1080.

Comment No.1 for the use and importance of benchmarks as well as their noted general function and recognition in human rights discourse, it is proposed that the following serve as criteria for the discussions in parts 2.4 through 2.5 which will assess the effectiveness of benchmarks set by the Covenant and its expounding documents. Thus, an effective benchmarks must be:

- 1) Specific- to national needs and socio-economic and political circumstances.
- 2) Universally recognizable- though the creation of the benchmark is specific to each country it must still be an external, objective standard that is recognizable outside of the State particularly for monitoring and measuring States' compliance.
- 3) Measurable- qualitatively and quantitatively.
- 4) Framed in positive terms - as human rights require States to actively fulfil their obligations under the Covenant, the goals and targets they set should reflect and enable States' positive obligations.

It is further proposed that where benchmarks do not meet the above stated criteria there is a far greater burden on States to engage with, interpret and apply them for themselves. Further, where these criteria have not been met, effective benchmarking towards the realization of ESCRs would require that States engage with the CESCR through the State reporting procedure and or drive the domestic interpretation, application and implementation of the benchmarks themselves. It will be argued that this requires significant political will on the part of State parties.

## **2.4 BENCHMARKS OF THE NATURE AND SCOPE OF LEGAL OBLIGATIONS UNDER THE COVENANT: ARTICLE 2(1)**

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all means, including particularly the adoption of legislative measures.<sup>72</sup>

The text of this subsection of article two is the primary source of the obligations of State parties towards the realization of all the rights espoused in the Covenant.<sup>73</sup> It is argued that because of the conception of and preoccupation with the alleged differences in the nature of ESCRs which engulfed the Covenant's drafting process, this subsection of the Covenant is a careful, deliberate assembly of words which imply both obligations of conduct and result but in a vague and imprecise manner that serves not to bind States in an unyielding or static way.

The terms and phrasing of this subsection reflect many of the pre-occupations held by representatives during the drafting process who believed that ESCRs, because of their resource intensive nature, could only be undertaken progressively.<sup>74</sup> The inclusion of specific words such as “undertakes to take steps”, “maximum available resources” and “to achieve progressively the full realization” is the result of serious compromises and debates that took place over how binding the obligations to implement, enforce, and protect such resource intensive rights should be.<sup>75</sup> During the drafting process, a majority of State representatives preferred the phrase “to take steps” versus “to guarantee” as it was believed that “guarantee” implied a formal obligation of conduct to secure the rights. This, it was believed, was beyond what could be expected of States and

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<sup>72</sup> ICESR Article 2(1).

<sup>73</sup> Craven, 107.

<sup>74</sup> Ibid

<sup>75</sup> Ibid, Alston & Quinn, 166 and Dennis, M. & Stewart, D., 479-480.

as such, the phrase “undertakes to take steps” was used instead of “guarantee”.<sup>76</sup> Though chosen for the manner in which it does not bind States in a precise manner, this phrase has been said to be of the clearer more precise legal obligations in this subsection as it implies a clear legal obligation of conduct. While it was agreed that full realization of ESCRs could not be realized immediately, it is said to imply from the wording “to take steps” that *active* steps be taken either immediately, before or within a reasonably short time after ratification of the Covenant.<sup>77</sup> Leckie<sup>78</sup> states as well that the obligation to *take steps* indicates *inter alia* that States assume some immediate legal duties upon ratification of the Covenant. Craven asserts further that this wording implies that even though the realization of ESCRs is to be progressive, it is not open to States to delay indefinitely their implementation.<sup>79</sup>

Not only are States to act immediately towards the realization of ESCRs, they are to do so “individually and through international assistance and co-operation”. This wording qualifies the active steps of States in that it states what kinds of actions States are to undertake. It is clear from this that States have an obligation to act individually towards the end of progressive realization but, it also implies that States are to actively seek assistance, co-operate and engage with the international community. The duties surrounding this aspect of the obligation to actively take steps towards the realization of ESCRs have, however, been widely debated as the Covenant is not clear on what international assistance and co-operation mean and or entail. The phrase has often been interpreted as an obligation of richer, more industrialized countries to actively assist

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<sup>76</sup> Alston & Quinn, 165.

<sup>77</sup> Ibid.

<sup>78</sup> Leckie, S. “Another Step towards Indivisibility: Identifying the Key Features of Violations of Economic, Social and Cultural Rights” (1998), Vol. 20(1), *Human Rights Quarterly*, 93.

<sup>79</sup> Craven, pg 108.

poorer, less developed countries in the fulfilment of the terms of the Covenant.<sup>80</sup> At the time of the drafting of the Covenant, it was conceded by a majority of representatives that developing States would need international assistance (from developed States) if they were truly and effectively to promote, protect and enforce ESCRs.<sup>81</sup> This position was justified on, among other things, the grounds that the development of poorer countries was directly linked to resources over which developed countries exerted primary control as well as that less developed countries were owed international assistance by more developed countries as reparation for the raping of their economies and resources under colonialism.<sup>82</sup> This concession seems to indicate that there was some preoccupation regarding the ability of developing nations to fully realize ESCRs given the constraint in resources which they faced. This study is therefore particularly concerned with the obligation to use “maximum available resources” as it has posited whether a constraint in resources is the significant factor in States’ engagement with benchmarking processes and hence the realization of ESCRs.

“Maximum available resources” places an obligation on States to gauge, based on their circumstances, what they can devote towards the realization of ESCRs. Again, to avoid placing States under a static and unyielding obligation, the drafters of the Covenant agreed on wording that would allow States to progressively achieve the standards of the Covenant within the context of their varying socio-economic realities.<sup>83</sup> This wide scope, however, raises some critical implications for the efficacy of the benchmark in resource

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<sup>80</sup> Alston & Quinn 166-1667.

<sup>81</sup> Ibid, 188.

<sup>82</sup> Ibid, 189.

<sup>83</sup> Craven , 108-109 and Alston & Quinn, 177-178.

stricken States as well as those that lack political to promote, enforce and implement ESCRs.

Though the obligation of conduct to expend resources to achieve ESCRs is apparent, the scope, as is implied by the wording of this subsection is vague. The term “maximum available” does not adequately specify in measurable terms the extent of the obligation as there are no provisions for a qualitative or quantitative assessment of compliance with the obligation. This places the onus on the State to unravel the obligation (given its socio-economic circumstances), create benchmarks and then actively work towards them. This requires a significant amount of political will to undertake. The effectiveness of “maximum available” as a benchmark, as it highly dependent on political will, will be severely curtailed in States that do not or will not engage it on this level. Secondly, from a plain reading of this subsection, it can only but be assumed that it is left to the State to gauge its own compliance. It is not clear whether the treaty supervising body, the international community and or other international bodies are also charged with scrutinizing compliance with this obligation. Moreover, if they are overtly charged with doing so, to what extent and, what criteria should be used to gauge compliance? The Covenant, particularly this subsection, is silent on a means of measuring compliance with this obligation as it offers no external, objective standard outside the State which can be used to judge its actions. Alston and Quinn thus ask “...why it is necessary, or even appropriate, to have an international treaty if each State Party is to be held accountable, with respect to the central element in the obligation, to itself”.<sup>84</sup>

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<sup>84</sup> Alston & Quinn, 178.



Robertson<sup>85</sup> argues that in a modern State public and private resources are used for purposes which ultimately relate to ESCRs. In light of this he questions the extent to which States should be criticized for directing inadequate resources towards objectives international law holds as a higher purpose. He goes further to state that the issue of the obligation to use maximum available resources has been largely undeveloped due to the inability of human rights advocates and authoritative bodies to articulate standards of State performance which give [precise] definition and usefulness to the terms in article two of the Covenant.<sup>86</sup> He maintains that without any true articulation and development of the standards associated with this obligation, any assessment of State performance in this area will lack vigour and ESCRs will continue to be viewed as idealistic rhetoric and not binding legal obligations of conduct and result.<sup>87</sup> Moreover it can be said that without this articulation and development, those States which do not have the political will to fully engage them consistently experience lower levels of ESCRs realization.

Unlike its sister Covenant (the ICCPR) which obliges States to undertake their responsibilities under the treaty immediately<sup>88</sup>, the ICESCR requires States to “achieve progressively the full realization of the rights recognized in the Covenant”. The phrasing and conceptual basis of this obligation is directly linked to the obligation to expend maximum available resources. This link arose out of the resounding desire to create obligations that would bind States but in a manner cognizant of and appropriate for States’ varying socio-economic realities<sup>89</sup>. Alston and Quinn note that this conceptualization of progressive

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<sup>85</sup> Robertson, R., “Measuring State Compliance with the Obligation to Devote “Maximum Available Resources” to Realizing Economic, Social and Cultural Rights”, (1994) Vol. 16(4), *Human Rights Quarterly*, 694.

<sup>86</sup> Ibid.

<sup>87</sup> Ibid.

<sup>88</sup> ICCPR, article 2(1)

<sup>89</sup> Alston & Quinn, 172-175.

achievement which links the issue of the varying availability of State resources and the full realization of the rights of the Covenant mirrors the inevitable contingent nature of State obligations and therefore ask whether the nature of this obligation is so contingent as to rob it of any normative significance.<sup>90</sup>

Alston and Quinn point out from the drafting history of the Covenant that though the word “progressive” functions as a limitation it is not to be invoked by States as basis for failing to fulfil their obligations under the Covenant.<sup>91</sup> The word essentially accommodates the varying economic realities of each State, binds States to their obligations with relation to their available resources and allows for the implementation of rights that were seen to be immediately unrealizable.<sup>92</sup> Moreover, the word “progressive” was seen to introduce a dynamic element of continuity to the Covenant which demonstrated that there was no fixed goal for the implementation and realization of ESCRs.<sup>93</sup> However, while it is clear that States must take immediate steps towards the achievement of the rights outlined in the Covenant according to the availability of their resources, it is largely unclear from the Covenant how this obligation of result is to be measured or assessed. The wording “full realization” describes a desired result and its vagueness leaves it up to the State to unravel what its positive steps toward that end should look like and to develop criteria on which to measure and assess its progress. It is argued that while the obligation of progressive realization is debatably *the* most salient feature of the Covenant it also quite problematic. It sets the pace at which each State is to undertake its obligations and while its intent is to allow each State to do so for itself its

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<sup>90</sup> Ibid, 172.

<sup>91</sup> 8 U.N. ESCOR C.4 (370<sup>th</sup> mtg.) at 5, U.N. Doc. E/CN.4/SR.307 (1952) (Mr. Juvingy, France) from Alston & Quinn, 174.

<sup>92</sup> U.N. Doc E/CN.4/SR.271, supra note 66, at 12 (Mrs. Roosevelt, U.S.A.) from Alston & Quinn, 174.

<sup>93</sup> U.N. Doc E/CN.4/SR.236, supra note 222, at 20-21 (Mr. Sorenson, Denmark) from Alston & Quinn, 174.

vagueness will affect its effectiveness as a benchmark in States that do not have the political will to engage with it rigorously.

The strength of the manner with which the Covenant deals with the nature obligations in article 2(1) is primarily that it is cognizant of and attempts to accommodate States' varying socio-economic realities. This is rooted in the idea that while ESCRs are of utmost importance, the implementation of the majority of these rights may not be immediate, the process of their implementation is immediate and continuous. It is conceded that many of the debates and preoccupations about the nature of ESCRs which characterized the drafting process are reflected in the wording of many of the Covenant's provisions. It has therefore been necessary to work towards defining, developing, and establishing not only the nature of the rights espoused in the Covenant, many of the terms and provisions which imply and require legal obligations of conduct and result, as well as their benchmarks. The following section will review such attempts.

## **2.5 BENCHMARKS SET BY THE LIMBURG PRINCIPLES, THE CESC AND OTHER EXPOUNDING DOCUMENTS**

### **2.5.1 Introduction**

For many years after the treaty's entry into force the lack of consensus that overshadowed its drafting process still persisted internationally regarding the interpretation and application of the terms of the Covenant.<sup>94</sup> It was believed that this persistent lack of consensus was one of the major inhibitors to real and effective implementation and enforcement of ESCRs ten years into the treaty's life.<sup>95</sup> Thus, in June

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<sup>94</sup> Martin, D.L. "Limburg Principles Turn Ten: An Impact Assessment", (1996) unpublished paper, 191-205 at: <http://www.uu.nl/uupublish/content-cln/20-09.pdf>.

<sup>95</sup> Ibid.

1986, a group of 29 international legal experts met to attempt to agree upon and thence establish principles for the interpretation and implementation of the treaty. The result was the creation of 103 principles that have been said to clarify many of the terms and provisions of the treaty particularly those concerning the nature and scope of State Party obligations and their benchmarks.<sup>96</sup> The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights<sup>97</sup>, have since been issued as a UN document<sup>98</sup> and have played a very critical role in the development of the understanding of many of the provisions and obligations in the Covenant as well as in the production of scholarly and UN produced documents on the implementation, enforcement, protection and violation of ESCRs.<sup>99</sup>

In 1987, a year after the adoption of The Principles, Committee Chair, Phillip Alston, asserted that the CESCR still needed to further examine and unravel the nature of State parties' obligation under the Covenant.<sup>100</sup> Of particular import to Alston in Article 2(1) of the Covenant was ascertaining and thence defining the meaning of the obligations to "take steps" and "to achieving progressively the full realization of rights". He consequently proposed that the Committee draft a document (which, in 1990, became General Comment No.3<sup>101</sup>) that would do exactly this.<sup>102</sup>

The relationship between the Limburg Principles and the CESCR's General Comments is interesting as though the Principles were produced by a non-UN body, they

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<sup>96</sup> Dankwa, V., Flinterman, C., & Leckie, S. "Commentary to the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights" (1998) Vol. 20(3), *Human Rights Quarterly*, 705-708.

<sup>97</sup> Limburg Principles, 122-135.

<sup>98</sup> U.N. Doc E/CN.4/1987/17.

<sup>99</sup> Martin, D.L., 191-199 and Dankwa, V., Flinterman, C., & Leckie, S., 705-706.

<sup>100</sup> Martin, D.L., 197.

<sup>101</sup> The Committee on Economic Social and Cultural Rights, General Comment No.3, The Nature of State Parties Obligation (Art. 2.1 of the Covenant) UN Doc HRI/GEN/1/Rev.1 at 45 (1994) 14 of December 1990; hereinafter "General Comment No.3"

<sup>102</sup> Martin, D.L., 197.

have been adopted as a UN document<sup>103</sup> and have been said to be influential in the content of the Committee's General Comments particularly General Comment No.3.<sup>104</sup> Though the Principles were slowly recognized by the CESCR<sup>105</sup> and not directly cited in General Comment No.3, the two documents still reach many of the same conclusions particularly as they expound obligations surrounding progressive realization and the use of maximum available resources.<sup>106</sup> Given the similarities in content on issues dealing with the justiciability of ESCRs, progressive realization and available resources, it can be inferred that the Principles were substantially taken into consideration during the drafting of the Comment.<sup>107</sup>

The Limburg Principles were also significant in the content of the Maastricht Guidelines. Though their focus is on the implementation of ESCRs they have been said to have paved the way for the interpretation of the violations of ESCRs. Dankwa, V., Flinterman, C., & Leckie, S. state that:

The Limburg Principles constitute a first effort to substantiate the meaning of violations of economic, social and cultural rights. It was, however, clear that this notion needed more reflection and that it would be important to spell out a catalogue of types of violations of economic, social and cultural rights. An attempt in this respect has been made...which like the Limburg Principles relate primarily to the ICESCR. The guidelines are, however, phrased in a general way so as to facilitate their use in the interpretation and application of economic, social and cultural rights provided for in either domestic law or other regional and international instruments.<sup>108</sup>

Thus, arising out of the need to further clarify what violations of ESCRs entailed, a group of more than thirty legal experts met in Maastricht on the tenth anniversary of the Limburg Principles and unanimously agreed on guidelines which they believed reflected

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<sup>103</sup> U.N. Doc E/CN.4/1987/17.

<sup>104</sup> Martin, D.L., 197-200.

<sup>105</sup> Ibid; He surmises that this slow recognition had more to do with the general bureaucratic nature of the UN rather than opposition to the Principles themselves.

<sup>106</sup> Ibid.

<sup>107</sup> Ibid, 197.

<sup>108</sup> Dankwa, V., Flinterman, C., & Leckie, S., 712.

the evolution of international law since the advent of the Principles and which could be used to understand and determine violations of ESCRs.<sup>109</sup> Together, these three documents (as well as other General Comments issued by the CESCR have significantly clarified the nature and scope of States' obligations under article 2(1) of the Covenant as well as have set benchmarks for their assessment.

### 2.5.2 Benchmarks for Measuring the Obligation “to take steps”

Paragraph 16 of subsection B of the Limburg Principles begins by re-affirming that all States parties have an obligation to begin immediately “to take steps” towards the full realization of the rights contained in the Covenant. Unlike in the Covenant, it is made clear in the previous Subsection<sup>110</sup> that national action and involvement is required for the full realization of the Covenant. Paragraphs 17 through 19 thus state that State parties shall, at the national level use legislative, administrative, judicial, economic, social and educational measures in order to fulfil obligations under the Covenant. This is important as it begins to articulate and emphasize the active role of the State in benchmarking processes towards the full realization of ESCRs.

General Comment No. 3, unlike the Limburg Principles and the Maastricht Guidelines, focuses solely on the obligation of conduct; “to take steps”. Of its strengths is that it re-iterates both the Covenant and the Limburg Principles by stating that while the full realization of ESCRs may be achieved progressively, steps to that end must be taken within a reasonably short time after the Covenant's entry into force. Again, it is powerfully stated that though the desired state of the realization of ESCRs will be

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<sup>109</sup> Ibid, 708.

<sup>110</sup> The Limburg Principles, Part I (A. 10 and A.11).

progressive due to States' varying socio-economic realities, the obligation of conduct to this end is immediate.<sup>111</sup> Where the Covenant and Principles do not add further to this concept, General Comment No.3 qualifies the word “steps” in the progressive realization context. It states that the word “steps” implies that States' actions must be “deliberate”, “concrete” and “clearly targeted” towards the realization of ESCRs.<sup>112</sup> Later general comments consistently reaffirm that State parties must be actively taking these kinds of steps. General Comment No. 14 reiterates that the State parties have immediate obligations in relation to the right to health and that there is thus an incumbent obligation to take steps that are deliberate, concrete and targeted towards the full realization of the right to health.<sup>113</sup> And, General Comment No. 15<sup>114</sup> makes a similar assertion with regards to the right to water.<sup>115</sup> These words not only elucidate the obligation of the result of progressive realization but also the obligation of conduct towards that end.

General Comment No. 4 states that “[m]easures designed to satisfy a State party's obligations in respect of the right to adequate housing may reflect whatever mix of public and private sector measures [are] considered appropriate”<sup>116</sup> without expanding what this entails. It does, however, state in previous sub-section<sup>117</sup> that “the most appropriate means of achieving the full realization of the right to adequate housing...will almost

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<sup>111</sup>Eide,A, “Promoting economic, social and cultural rights: Obligations of status and accountability of non-state actors”, (2000) UNDP Global Forum at: [www.undp.org/docs/events/global\\_forum/2000/eide.pdf](http://www.undp.org/docs/events/global_forum/2000/eide.pdf), 8.

<sup>112</sup>General Comment No.3, para 2.

<sup>113</sup> General Comment, No. 14, para 30.

<sup>114</sup> The Committee on Economic, Social and Cultural Rights General Comment Number 15, The Right to Water (Arts. 11 and 12 of the Covenant) UN Doc. E/C.12/2002/11 20 January 2003; hereinafter “General Comment No. 15”.

<sup>115</sup> Ibid, para 17.

<sup>116</sup> The Committee on Economic Social and Cultural Rights, General Comment No.14, The Right to the Highest attainable Standard of Health, (Article 12 of the Covenant), UN Doc E/C.12/2000/4, 11 August 2000, para 14; hereinafter “General Comment No. 14”.

<sup>117</sup> Ibid, para 12.

invariably require the adoption of a national housing strategy”<sup>118</sup>. Again, it is emphasized that the onus is on States to define the objective for the development of shelter conditions, identify resources available to meet these goals and the most cost-effective way of using them as well as set out the responsibilities and time frames for the implementation of necessary measures.<sup>119</sup> It is argued, that the extent to which States will undertake and expend the resources to undergo the processes elaborated in these later General Comments will be largely determined by national political will.

Later General Comments of the CESCR make significant advances from the practical and conceptual issues left unaddressed by General Comments Nos.3 and 4. As they are right specific, they elaborate on measures appropriate for the realization of their relevant rights. It can be said that though definitions of targeted, deliberate and concrete are not given, the entire Comment functions as practical and contextual bases for the interpretation and implementation of targeted, deliberate and concrete measures. For example, General Comment No. 15 states that States should adopt comprehensive and targeted measures such as low cost techniques, pricing policies and income supplements to ensure that water is affordable.<sup>120</sup> It thus sets a framework for States and the Committee to gauge compliance with obligations and the realization of the relevant rights. It is contended therefore, that the Committee since its earlier General Comments has recognized the importance of the inclusion of the specification and elaboration of “appropriate”, “targeted”, “deliberate” and “concrete” measures. The efficacy of these elaborated benchmarks however, is highly dependent on the political will of States to truly engage with them.

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<sup>118</sup> Ibid.

<sup>119</sup> Global Strategy for Shelter, para 32.

<sup>120</sup> General Comment No. 15, para 27.



### 2.5.3 Benchmarks for Measuring Obligations Relevant to Progressive Realization and the Use of Maximum Available Resources

The Limburg Principles’ strengthen the concept of “progressive realization” by adding that State parties are obliged to move expeditiously towards the realization of ESCRs and that they, under no circumstances, are to interpret this obligation as a right to indefinitely defer the realization of the rights outlined in the Covenant.<sup>121</sup> Most importantly, the Principles also assert that this obligation “exists independently of the increase of resources” and, in fact, requires the effective use of available resources.<sup>122</sup> This assertion further strengthens the interpretation of progressive realization as it makes it clear that while, as an obligation of result, progressive realization is contingent on States’ resources, as an obligation of conduct it is *not* dependent on States’ resources. General Comment No. 3 makes a similar assertion. It states:

“The concept of progressive realization constitutes a recognition of the fact that full realization of all economic social and cultural rights will generally not be able to be achieved in a short period of time....Nevertheless, the fact that realization over time, or in other words progressively, is foreseen under the Covenant should not be misinterpreted as depriving the obligation of all meaningful content. It is on the one hand a necessary flexibility device, reflecting the realities of the real world and the difficulties involved for any country ensuring full realization of economic, social and cultural rights. On the other hand, the phrase must be read in the light of the overall objective, indeed the *raison d’être* of the Covenant which is to establish clear obligations of State parties in respect of the full realization of the rights in question.”<sup>123</sup>

General Comment No. 14 similarly states that while the obligation of progressive realization acknowledges the constraints of resources in varying States, State parties still have an immediate obligation in relation to the right to health such as the guarantee that the right will be exercised without discrimination of any kind.<sup>124</sup> General Comment No.

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<sup>121</sup> The Limburg Principles Part I(B.22).

<sup>122</sup> Ibid, Part I(B. 23).

<sup>123</sup> General Comment No.3, para 9.

<sup>124</sup> General Comment No. 14, para 30.

11, however, very clearly sets grounds for the undertaking of the progressive realization of the right to education. It states very precisely that:

“[A] plan of action must be aimed at securing the progressive implementation of the right to compulsory primary education, free of charge, under article 14. Unlike the provision in article 2.1, however, article 14 specifies that the target date must be "within a reasonable number of years" and moreover, that the time-frame must "be fixed in the plan". In other words, the plan must specifically set out a series of targeted implementation dates for each stage of the progressive implementation of the plan. This underscores both the importance and the relative inflexibility of the obligation in question.”<sup>125</sup>

This clearly sets a framework for understanding the pace at which States are to develop for themselves a plan to achieve compulsory and free primary education and thus gives both the State and the Committee criterion which can be used to gauge their compliance and achievement. However, this exercise of setting a series of target implementation dates for each stage of the progressive implementation plan clearly puts a significant amount of onus on the State to develop and follow up with.

On the issue of resources, The Principles go farther than the Guidelines in its expansion of the issue of resource availability as it actually states what constitutes a resource<sup>126</sup>. They state that “available resources” refers to both the resources within a State and those available from the international community through international co-operation and assistance.<sup>127</sup> They attempt to further clarify the scope of the obligation to use “maximum available resources” by stating that in determining whether adequate measures have been taken for the realization of the rights recognized in the Covenant attention shall be paid to equitable and effective use of and access to available resources.

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<sup>125</sup> General Comment No. 11, para 10.

<sup>126</sup> The Maastricht Guidelines merely state in Section II (10) that: In many cases compliance with such obligations may be undertaken by most States with relative ease, and without significant resource implications. In other cases, however, full realization of the rights may depend on the availability of adequate financial and material resources. General Comment No. 3 states in paragraph 11: “[E]ven when available resources are demonstrably inadequate, the obligation remains for a State party to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances.”

<sup>127</sup> The Limburg Principles Part I(B.25)

While this emphasizes that the equitable and effective use of and access to resources must be taken into consideration when assessing or measuring state compliance, it still leaves the issue of how to gauge what is equitable and effective loose and unqualified. Even though this short subsection<sup>128</sup> strongly re-affirms that all State parties are obligated to fulfil their obligations under the Covenant regardless of their the level of economic development, it leaves this awkward yet critical dynamic between the obligation to fully realize the terms of the Covenant and the crisis of available resources, largely untouched and undeveloped. While it may be the intent of the Comment to have States elucidate for themselves what is the equitable and effective use of resources towards the full realization of ESCRs entails in their context, this approach assumes at its core that all States are sufficiently motivated to undertake such a process.

General Comment No. 4 makes the assertion that “[r]egardless of the state of development of any country, there are certain steps which must be taken immediately”<sup>129</sup> and makes provision for the issue of resource availability and the immediate obligations to the end of progressive realization. It refers to the provision in article 2(1) of the Covenant for the use of international co-operation and assistance and states that, “[t]o the extent that any such steps are considered to be beyond the maximum resources available to a State party, it is appropriate that a request be made as soon as possible for international cooperation...”<sup>130</sup> This seems to suggest that mechanisms such as world conferences, international policies and guidelines can not only be used as sources of funding but are also important to the benchmarking process and hence the realization of ESCRs. The Guidelines mention the 1994 Cairo International Conference on Population

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<sup>128</sup> Ibid, Part I(B.25-B.28)

<sup>129</sup> General Comment No. 4, para 10.

<sup>130</sup> Ibid.

Development and the 1995 Beijing Fourth World Conference on Women which set standards for the reduction of maternal mortality rates.<sup>131</sup> Does this, however, suggest that States should be looking to these types of mechanisms to know what the relevant standards or benchmarks are as they create their own benchmarks? The Guidelines do not explicitly say so. The Committee, however, consistently points to several such types of mechanisms in both earlier general and later right specific general comments and refers to them as exemplars of benchmarks, sources of guidance and resources and use them within the Comment itself to define, clarify and establish the nature and scope of specific rights and the obligations which surround them.

For example, General Comment No.4<sup>132</sup> looks to both the Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000 for the definition of “adequate shelter”<sup>133</sup> as well as encourages States to apply the Health Housing Principles<sup>134</sup> which explicate the relationship between inadequate housing and mortality and morbidity rates.<sup>135</sup> General Comment No. 14, also maintains that “[t]he realization of the right to health may be pursued through numerous complementary approaches, such as the formulation of health policies, or the implementation of health programmes developed by the World Health Organization (WHO), or the adoption of specific legal instruments.”<sup>136</sup> This is evidently useful as it provides States with sources which can be used as benchmarks themselves or aids as they create national benchmarks. The Comments of the Committee are, however, not enforceable against non-complying State

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<sup>131</sup> The Maastricht Guidelines, para 7.

<sup>132</sup> The Committee on Economic Social and Cultural Rights, General Comment No.4, (Art. 11.1 of the Covenant) The Right to Adequate Housing, UN Doc E/CN.4/1991/4 13 of December 1991; hereinafter “General Comment No.4”.

<sup>133</sup> Ibid., para 7.

<sup>134</sup> Health Housing Principles prepared by the WHO, World Health Organization, Geneva, 1990,

<sup>135</sup> General Comment No. 4, para 8(d)

<sup>136</sup> General Comment No. 14, para 1.

parties to the Covenant or international institutions such as the WHO.<sup>137</sup> Moreover, the language merely “encourages” and “suggests” that States use these mechanisms to the end of the realization of ESCRs. This ultimately requires that States, on their own volition, refer to, analyze, interpret and domesticate the policies and approaches the Comments refer to as guidelines and or benchmarks. It is contended that the extent to which States will expend the resources and effort to do this will be largely determined by political will.

General Comment No. 11 states further on the issue of resource availability in developing countries that it is aware that the structural adjustment programmes that began in the 1970s, the debt crises that followed in the 1980s and the financial crises of the late 1990s, as well as other factors, have greatly exacerbated the extent to which the right to primary education is being denied.<sup>138</sup> It however still asserts that:

[I]n appropriate cases, the Committee encourages States parties to seek the assistance of relevant international agencies, including the International Labour Organization (ILO), the United Nations Development Programme (UNDP), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the United Nations Children's Fund (UNICEF), the International Monetary Fund (IMF) and the World Bank, in relation both to the preparation of plans of action under article 14 and their subsequent implementation. The Committee also calls upon the relevant international agencies to assist States parties to the greatest extent possible to meet their obligations on an urgent basis.<sup>139</sup>

Although provision is made in an attempt to close the gap between immediate obligations towards the progressive realization of the right to education and the issue of resource availability, the effectiveness of this means of benchmarking expressed in General

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<sup>137</sup> The General Comments of the Committee are official (non-legal) statements adopted by the Committee that elaborate on the meaning of treaty obligations. They may be procedural in nature (e.g. General Comment No. 1 on State reporting) as well as address substantive provisions of the treaty (e.g. General Comment No. 9 on the Domestic Application of the Covenant) and provide the Committee's interpretation of treaty rights (e.g. General Comment No. 14 on health). As the ICESCR is a Covenant, it binds only State parties to it. And though the committee is not equipped with adjudicatory powers, the statements of the CESCR are binding to the extent that they reiterate obligations to which State parties are already bound.

<sup>138</sup> General Comment No. 11, para 3.

<sup>139</sup> Ibid, para 11.

Comment No.11 will still be largely impacted by States' desire to engage institutions such as the IMF and World Bank for funding and assistance. It is therefore contended that though the Comment calls on these institutions to assist States in policies and programmes aimed at the realization of the right to education, the efficacy of the this route to benchmarking rests primarily on States' degree of motivation to engage with institutions such as these.<sup>140</sup>

#### 2.5.4 The Minimum Core Obligations Benchmark

General Comment No. 3 is the first time the concept of “minimum core obligations” is introduced as a benchmark of compliance. The Comment stresses that the concept of “minimum core obligations” arose out of the extensive experience gained by the Committee in reviewing State reports.<sup>141</sup> It does not state how this experience reviewing States reports led to the concept of minimum core obligations but does state that it believes that the obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights in the Covenant is incumbent upon each State. It also asserts that this obligation sits at the very core or *raison d'être* of the Covenant.

The Comment attempts to reconcile the issues associated with the availability of resources and hence States' compliance with minimum core obligations by stating (in the negative) that if States fail to meet minimum core obligations due to a lack of resources, they must demonstrate that every effort has been made to use all available resources in a manner that satisfies, as a matter of priority, those minimum obligations.<sup>142</sup> Though it

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<sup>140</sup>See Oloka-Nyango, J. for discussion on the relationship between the World Bank and IMF policies and the realization of economic and social rights in Africa.

<sup>141</sup> General Comment No. 3, para 10.

<sup>142</sup> Ibid, para 10.

must be recognized that this is a significant advancement in the interpretation of the Covenant, it must also be said that the comprehensive implementation of ESCRs would require a more detailed framework than what is presented in the Comment and its assertion<sup>143</sup>. This is most essential for States that are not meeting their minimum core obligations and particularly for those which are simply not engaging with the processes towards their fulfilment.

The Maastricht Guidelines expand this obligation but do so in the negative. The Guidelines state that if significant numbers of people in a State are deprived of basic foodstuffs, essential primary care, shelter or basic education, then that State is in clear violation of the minimum core obligation under the Covenant.<sup>144</sup> It also restates that the minimum core obligations apply regardless of the availability of resources or any other factors<sup>145</sup> and further that resource scarcity does not relieve States of certain minimum obligations.<sup>146</sup> The Guidelines however further purport that given this, the burden is on the State to demonstrate that it is making *measurable* progress towards the full realization of ESCRs<sup>147</sup>. This is problematic because it does not, again, contextualize, define or qualify what “measurable” is and relies on the will of the State to unravel and thence demonstrate this. While this is not an impossible feat, it is argued that this takes a tremendous amount of political will to fully engage with.

Later right specific General Comments such as Comment No. 14 outline the Committee’s view of minimum core obligations and thus provide States with criteria that will be used to assess their level of compliance with the obligation. Comment No.14

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<sup>143</sup> Eide, A., 11.

<sup>144</sup> Maastricht Guidelines, para 9.

<sup>145</sup> Ibid.

<sup>146</sup> Ibid, para 10.

<sup>147</sup> Ibid, para 8.

states that in view of General Comment No. 3, it acknowledges that State parties have core obligations to ensure the satisfaction of, at the very least, minimum essential levels of the rights enunciated in the Covenant.<sup>148</sup> It, however, goes further to offer instruments such as the Programme of Action of the International Conference on Population and Development<sup>149</sup> and the Alma-Ata Declaration<sup>150</sup> as compelling guidelines on the core obligations arising from article 12 of the Covenant and thence states the Committee's view on the core obligations associated with the right to health.<sup>151</sup> They include access to health facilities, goods and services on a non-discriminatory basis<sup>152</sup>, the provision of minimum essential levels of safe and adequate food<sup>153</sup> and drugs (as is from time to time defined under the WHO Action Programme on Essential Drugs)<sup>154</sup>, as well as the adoption and implementation of a national public health strategy and plan of action.<sup>155</sup> While the strength of the Comment's approach is that it gives to States upfront the criteria on which they will be assessed and points them to relevant guidelines which have set international benchmarks regarding the realization of the right to health which can be used as they set national benchmarks, its weakness is that it, again, requires that States have significant political will to aptly engage with and hence benefit from them.

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<sup>148</sup> General Comment No.14, para 43.

<sup>149</sup> Report of the International Conference on Population and Development, Cairo, 5-13 September 1994, chap. I, resolution 1, annex, chaps. VII and VIII.

<sup>150</sup> Alma-Ata Declaration, Report of the International Conference on Primary Health Care, Alma-Ata, 6-12 September 1978, in: World Health Organization, "Health for All" Series, No. 1, WHO, Geneva, 1978.

<sup>151</sup> General Comment No. 14, para 43.

<sup>152</sup> Ibid, para (a).

<sup>153</sup> Ibid para 43(b).

<sup>154</sup> Ibid, para 43(d).

<sup>155</sup> Ibid, para 43(f).



## 2.6 CONCLUSION

It has been proposed that effective benchmarks are specific to States' national needs and socio-economic and political circumstances, are universally recognizable (i.e. an objective standard that is recognizable outside of the State particularly for monitoring and measuring States' compliance), are measurable qualitatively and quantitatively and should be framed in positive terms to reflect and enable States' positive obligations. It was thus argued that benchmarks established in the Covenant and its earlier legal and scholarly expounding documents are vague, imprecise, sometimes framed in negative, and in immeasurable terms. Given that they are the founding documents of ESCRs and were consequently and purposefully framed in vague and imprecise terms, their primary strength is that they set the groundwork for further development by the CESCR on the nature and scope of positive obligations under the Covenant. Later Comments by the Committee therefore build on previous concepts and principles and provided substantial development in the nature of ESCRs by including specific, measurable standards relating to the nature and scope of the obligations under the Covenant. It was further argued, however, that because the committee's later General Comments often point States to further guidelines and principles (which then have to be interpreted and implemented domestically), they require a significant level of political will on the part of States to engage with and thus implement.

Benchmarks, as have been defined in this chapter, are not just those set by the Covenant, the CESCR through its general comments, and other expounding documents. Chapter three will thus look at the other manner in which the CESCR envisions and facilitates the benchmarking process of State reporting. As this study is concerned with

the relative role of resources in benchmarking processes and consequently the realization of ESCRS within the African context, chapter three will look at the issues plaguing the State reporting system and their implications for African States. The majority of the chapter will therefore focus on African States' compliance with the obligation to engage this process as a means of assessing the impact and, in turn, the relative importance of resource constraints and political will on this system within the African economic and political context. This focus will additionally serve as a background for the investigation (in chapter four) which finally illustrates that benchmarking, and hence the realization of ESCRs, is not significantly impacted by the availability of resources.

## **CHAPTER 3: THE RELATIONSHIP BETWEEN STATE REPORTING AND BENCHMARKING: THE AFRICAN CONTEXT**

### **3.1 INTRODUCTION**

The State reporting system, established by the Covenant in articles 16 through 18, sets up a mechanism which monitors States' progress with the realization of ESCRs as well as provides them with assistance and recommendations to this end (benchmarking) through a concluding observations procedure.

The relevance of the State reporting procedure to the study is therefore hinged on the fact that the Covenant and the CESCR both have consistently established and recognized that it is of utmost importance in the creation of national benchmarks.<sup>156</sup> Prior to assessing the relative importance of resource constraints and political will to the benchmarking procedure within the African context, it is essential to examine the process and some of the issues that plague its general effectiveness. It is contended that these issues are further exacerbated within the African economic and political context by the fact that it requires significant political will to submit reports and complete the reporting process. It is therefore concluded that State reporting, as a benchmarking process, is significantly impaired in Africa by the fact that it requires the application of a high degree of political will. Chapter four will support this with a comparative analysis of African and Commonwealth Caribbean States' levels of human development, compliance with the obligation to submit periodic reports and levels of resource availability.

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<sup>156</sup> General Comment No.1, para 6.

### 3.2 INTRODUCTION TO THE ICESCR IN THE AFRICAN CONTEXT

States will almost always sign on to any international instrument if it is vague or weak enough or, simply if it is politically advantageous to do so. The overwhelming majority of signatories to the Covenant should not, therefore, be taken to construe that its standards and purposes have been widely accepted and or implemented internationally.

There are 66 signatories and 156 parties to the Covenant as of July 2007.<sup>157</sup> Of these, approximately 47 of the just over 50 African States are parties and to the ICESCR as of March 2007.<sup>158</sup> Among those African States that have neither signed nor ratified the Covenant are: Botswana, the Comoros, Mozambique, and Sao Tome and Principe and South Africa has signed but not ratified the Covenant<sup>159</sup>. Clearly, the overwhelming majority of States in Africa have signed/ratified the ICESCR and it is surely encouraging that almost the entire continent recognizes, in this manner, ESCRs. The regimes of the signatories span from failed, to democratic States as well as dictatorships and kingdoms<sup>160</sup>. Given the number of African States that are party to the treaty and the variety of political systems they represent, little attention should be paid to which States or the types of States that are party to the Covenant. What can be inferred from the number of signatories and the economic and political variety however, is that each of these States, as parties to the Covenant, at some point were (to some extent) in agreement with the rest of the region and the international community on the importance of ESCRs. This, given the highly controversial nature of ESCRs globally, should be regarded as a

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<sup>157</sup> Office of the United Nations Commissioner for Human Rights, [www.ochr.org/english/countries/ratifications/3.htm](http://www.ochr.org/english/countries/ratifications/3.htm), last accessed 6 September 2007.

<sup>158</sup> See Table 1 for a complete list of African State Parties to the Covenant. Data obtained from United Nations Treaty Body Database, <http://www.unhchr.ch/tbs/doc.nsf>.

<sup>159</sup> South Africa does have a Bill of Rights which recognizes ESCR. *See* The Constitution of the Republic of South Africa, Act 108 of 1996, Chapter 2.

<sup>160</sup> Examples of such states are respectively: Sudan, Ghana, Zimbabwe and Swaziland.

major feat for the continent. It could, additionally be said that that this number indicates that there is general agreement across the continent regarding the status of ESCRs as legitimate rights within the international human rights system.

The fact that a state, African or not, has ratified or signed on to a universal set of norms is in no way indicative of the fact that they will accept its obligations, fully comply with its provisions and undertake them in a manner consistent with the treaty.<sup>161</sup> While most human rights lawyers and activists would like to think that ratification and accession are in some way a signal of a State's commitment to an international set of norms or its political will towards their full realization, it can be said that treaties, depending on how politically advantageous they are, can be used as political tools or for propaganda purposes. In the African context, it is interesting to note that over half of the accessions to the Covenant took place within the first half of the treaty's life in force.<sup>162</sup> This time period, 1976-1991, followed decolonization and was the era of the birth of States across the continent. Many new States in addition to grappling with the administrative and political newness of statehood also had to deal with the legacy of their colonial pasts.<sup>163</sup> It is maintained that Covenants such as the ICCPR and ICESCR not only aided in the fight for the fall of colonization and the ushering in of independence but on being newly liberated members of the international community it was politically savvy to adopt and or recognize as many "important" conventions as possible to appear to be willing participants of the international community.<sup>164</sup> Most importantly, Covenants such as the ICESCR would also prove to be quite important in dealing with the issues of post-

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<sup>161</sup> Mower Jnr., A., 22.

<sup>162</sup> See Table 1.

<sup>163</sup> See Ibhawoh, B., 842-843 and 846-847 and Oloka-Onyango, J.

<sup>164</sup> Shedrack, A.C., 181-183.

colonial societies.<sup>165</sup> Thus, it can be said that as part of the IBHR, the ICESCR was another tool used in the fight for independence and, for newly liberated States, was a core around which they could re-build and re-invigorate their emerging societies.<sup>166</sup> This had the potential for significant impact on these emerging societies as States could use them to shape newly introduced judicial and political systems; ultimately fulfilling the intent of the IBHR to serve as a moral and legal compass for the international community. The reality of the ICESCR, however, is that many of the States, though having acceded or ratified the Covenant, did not and do not take it seriously, have not incorporated it into domestic law, or choose to interpret its provisions in ways which accommodate them to existing laws or practices.<sup>167</sup> The track records of states such as Sudan and Zimbabwe (both of which became signatories to the covenant in the first half of its existence) speak volumes on States' tendency to sign on to treaties with little to no intention of working towards its full realization. Mere accession and ratification thus does not give effect to rights. It is therefore of utmost importance to monitor States' progress with the implementation of the provisions of a Covenant, their compliance with their obligations, and, in the event of their failure to do so in any of these areas, assist, co-operate and or compel (to the extent authorized by the treaty) them to these ends.

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<sup>165</sup> See Lyon, B.

<sup>166</sup> Shedrack, A.C.177-216

<sup>167</sup> Ibid; See also Ibhawoh, B., Oloka-Onyango, J. , Makinda, S., and Shedrack, A.C.

### 3.3 STATE REPORTING

#### 3.3.1 The State Reporting Process

Articles 16, 17 and 18 are the foundation of the Covenant's reporting system. Article 16 (1) establishes the obligation of States to submit reports to the Secretary General (SG) which should expound the measures they have taken and the progress achieved by undertaking these measures in the overall realization of the promotion, protection and enforcement of the rights of the covenant. Article 17 sets the structure of the system. In subsection one it gives the task of the supervision of this process to ECOSOC which, in turn, is to set up a regulatory program for states' periodic reports within one year of the Covenant's entry into force.<sup>168</sup> Sub-section two briefly describes the desired content of these reports as being "factors and difficulties affecting the degree of fulfilment of obligations under the covenant". In an effort to avoid overburdening States which are parties to several other Covenants also requiring reports, sub-section three of Article 17 allows whatever information furnished in a report produced in accordance with the ICESCR to be duplicated. Article 18 allows for the participation of specialized agencies in the form of submissions as well. Article 19 broadly set the groundwork for a feedback mechanism (which would become the concluding observations procedure) within the reporting system as it gives ECOSOC, and, ultimately, whichever body it chooses to delegate it to, the power to undertake studies and make general recommendations on reports submitted under articles 16 through 18.

Prior to 1985, however, this procedure was rife with inefficiency and dysfunction. The primary issue was that the body set up to regulate this process, the *Sessional Working Group*, was a team of governmental experts and therefore not fully equipped to deal with

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<sup>168</sup> That body eventually became a *Sessional Working Group* and thence the CESCR.

economic, social and cultural human rights issues. The efficacy of the group, and essentially the system, was undermined by political dissent, the very shallow manner in which the group undertook the reviewing of the reports, the lack of progress in the development of guidelines for the reporting system and a failure to include substantive comments on the system to ECOSOC.<sup>169</sup> It is, however, debatable, just how thorough and efficient the review process could have been. The guidelines given in article 17 of the Covenant outlining issues and factors to be included in the reports are very vague and article 19, which allowed for general recommendations, is equally vague. The combination of a dysfunctional, disputing group and vague, underdeveloped guidelines led ECOSOC to create the CESCR in 1985.<sup>170</sup> Since then, the committee has made some significant changes to the system.

The most significant improvements to the system engendered by CESCR are that it clarified and strongly emphasized the obligation of States to report, the content of the reports as well as the development and strengthening of the concluding observations procedure. In General Comment No.1, the Committee set forth in the first paragraph that reporting is not only a procedural matter designed solely to satisfy each State party's formal obligation to submit a report but the process and preparation of the report itself served several objectives which were instrumental to the letter and spirit of the Covenant. It then went on to list these objectives:

- 1. to ensure that a comprehensive review is undertaken with respect to national legislation, administrative rules and procedures*<sup>171</sup>

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<sup>169</sup> Craven, M., 113 and Mower Jnr., A., 42-43.

<sup>170</sup> The Committee was established in 1985, met for the first time in 1987 and has to date held 14 sessions. Meeting initially on an annual basis, the Committee currently convenes twice a year, holding two three-week sessions, generally in May and November/December. It holds all its meetings at the United Nations Office at Geneva, Fact Sheet No.16 (Rev.1), The Committee on Economic, Social and Cultural Rights <http://www.ohchr.org/english/about/publications/docs/fs16.htm#6> accessed 19 April 2007

<sup>171</sup> General Comment No.1, para 2.



2. *to ensure that the State party monitors the actual situation with respect to each of the rights on a regular basis and is thus aware of the extent to which the various rights are, or are not, being enjoyed by all individuals within its territory or under its jurisdiction*<sup>172</sup>
3. *to enable the Government to demonstrate that such principled policy-making has in fact been undertaken.*<sup>173</sup>
4. *to facilitate public scrutiny of government policies with respect to economic, social and cultural rights and to encourage the involvement of the various economic, social and cultural sectors of society in the formulation, implementation and review of the relevant policies*<sup>174</sup>
5. *to provide a basis on which the State party itself, as well as the Committee, can effectively evaluate the extent to which progress has been made towards the realization of the obligations contained in the Covenant.*<sup>175</sup>
6. *to enable the State party itself to develop a better understanding of the problems and shortcomings encountered in efforts to realize progressively the full range of economic, social and cultural rights.*<sup>176</sup>
7. *to enable the Committee, and the States parties as a whole, to facilitate the exchange of information among States and to develop a better understanding of the common problems faced by States and a fuller appreciation of the type of measures which might be taken to promote effective realization of each of the rights contained in the Covenant.*<sup>177</sup>

In 1991, the CESCR thence produced a revised and an even more extensive set of guidelines<sup>178</sup> which asked specific questions that States could use as guidelines in assessing their progress towards the realization of articles one and two as well as six to 15 of the Covenant. This forward looking, comprehensive, methodical approach was a giant leap forward the Covenant, Committee and State parties as States now not only had a set of ideological goals and conceptual objectives but specific questions that could aid in their compilation and construction of the report and, the committee likewise had specific questions and guidelines which better aided their review of the reports and assessing overall States' achievements and compliance with the Covenant. This ultimately enabled States and the committee to better engage with the reporting process. More importantly, these questions and guidelines also have the potential to serve as or aid in the

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<sup>172</sup> Ibid, para 3.

<sup>173</sup> Ibid, para 4.

<sup>174</sup> Ibid, para 5.

<sup>175</sup> Ibid, para 6.

<sup>176</sup> Ibid, para 7.

<sup>177</sup> Ibid, para 8.

<sup>178</sup> Revised general Guidelines Regarding the Form and Contents of Reports to be Submitted by States Parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights, 17 June 1991, [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.1991.1.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/E.C.12.1991.1.En?Opendocument) Accessed 28 March 2007.

conceptualization and concretization of targets, goals and or criteria for States as they create their national benchmarks. General Comment No. 14 supports this assertion. It states:

“During the periodic reporting procedure the Committee will engage in a process of scoping with the State party. Scoping involves the joint consideration by the State part and the Committee of the indicators and national benchmarks which will then provide the targets to be achieved during the next reporting period. In the following five years, the State party will use these national benchmarks to help monitor its implementation of article 12 [of the Covenant].”<sup>179</sup>

On being submitted, reports and other information from the State are used to structure a dialogue between the State and CESCR. The committee will furnish a set of questions to the State which it will answer orally and, on completing this, the committee will conclude by issuing a set of concluding observations which are issued to the State in private and thence made public on the last day of the session. The committee’s observations are divided into five sections: (1) the introduction; (2) positive aspects; (3) factors and difficulties impeding the implementation of the Covenant; (4) principal subjects of concern; (5) suggestions and recommendations.<sup>180</sup> Other recognized definitions of “benchmark” include this consultative process as a crucial stage of benchmark creation and development. Dianne Otto states that a benchmark is “...a target, set by the State party after appropriate consultation [here with the CESCR], in relation to each of the Covenant rights.”<sup>181</sup> This five step consultative process is thus potentially very useful to States as they create, develop and set their national benchmarks. The Committee not only acknowledges and comments on positive aspects of States’ work towards the realization of ESCRs, but also engages the State in a dialogue on difficulties

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<sup>179</sup> General Comment No. 14, para 58.

<sup>180</sup> Fact Sheet No.16 (Rev.1), The Committee on Economic, Social and Cultural Rights  
<http://www.ohchr.org/english/about/publications/docs/fs16.htm#6>.

<sup>181</sup> Otto, D., “Economic, Social and Cultural Rights”, (2002), 3, *Human Rights Law Resources*, 6.

faced in their implementation and other subjects of concern. Through their recommendations and suggestions the committee gives States feedback and further guidelines which may be used as they not only implement policies for the realization of ESCRs but also as benchmarks which they (and the committee) can use to gauge their compliance with their obligations under the treaty. The concluding observations procedure thus has the potential to be powerful as it engages the Committee and the State in a constructive, consultative manner, and is one in which expertise and innovative ideas and or solutions to problems can be exchanged. It however, has suffered from some systemic issues which are further magnified in the African context.

Michael O’Flaherty<sup>182</sup> maintains that some of the issues affecting the efficacy of the concluding observations procedure across the UN’s varied treaties are: problems of accuracy and functionality, conflict between committees’ precise recommendations and States’ legitimate discretion, and follow up with States. O’Flaherty explains further that barriers to the submission, access to information, and the lack of independent, expert human resources to sift and analyze information are major impediments to effective dialogue between the State and the committee. This consequently tarnishes the overall quality of the concluding observations process.<sup>183</sup> He also argues that treaty bodies, in giving recommendations may often do so on matters that do not relate directly to the treaty. Things such as reservations and ratification of other related instruments as well as precise methodology for implementation are ultimately the choice of the State. O’Flaherty reasons that because the mandate of treaty bodies and the interdependence of all human rights, it often becomes necessary for them to make recommendations that

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<sup>182</sup> O’Flaherty, M. “The Concluding Observations of United Nations Human Rights Treaty Bodies”, (2006), Vol. 6(1), *Human Rights Law Review*, 27-52.

<sup>183</sup> Ibid, pg 37.

compete with such rights.<sup>184</sup> Lastly, O'Flaherty argues that follow up by committees is another shortfall within the concluding observations procedure. He claims that follow up by treaty committees is of central importance to the effectiveness of their work as without follow up, the likelihood of implementation is slim to none. He lists many actors that have been involved in the follow up process but those specific to the ICESCR have mostly been NGOs.<sup>185</sup> While O'Flaherty is optimistic about the changes to the observations features and hopeful about the challenges now facing it, it is maintained that such challenges are magnified in the African context because it requires significant amounts of political will to engage and remain engaged with the CDESCR and the reporting process.

African States, particular post (civil) war and or in transition societies, stand to gain significantly from a process that engages them meaningfully with the review of their legislative, administrative and social policies. It is, however, maintained that the aforementioned general issues of a critically backlogged system and the relating issue of the resource constraints of the CDESCR, the incompleteness of the reporting process and thus the underutilization of the concluding observation process are exacerbated within the African context as it takes significant political will to engage and remain engaged with the process. African States rarely fully comply with their obligation to submit reports to the CDESCR and consequently, more often than not, do not benefit from the reflective, consultative dialogue with the CDESCR. This process is of particular significance in the creation national benchmarks of implementation and measurement of their compliance with the standards and provisions of the Covenant. The effectiveness of the reporting

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<sup>184</sup> Ibid, pg 42.

<sup>185</sup> Ibid, 51.

procedure as a facilitator of the benchmarking process is therefore severely impacted by African States' non-compliance and consequent non-engagement with it.

### 3.3.2 African State Reporting

Of the 47 African states that have acceded and or ratified the ICESCR only 20<sup>186</sup> have ever submitted a report to the Covenant's monitoring body. This means that a majority 58 per cent of the African States party to the Covenant have *never* formally fulfilled the obligations set forth in articles 16 and 17. States falling into this category include Angola, Ethiopia, Namibia, Ghana, Somalia, Swaziland, Chad, Uganda Seychelles and Mauritania. Of the States that did submit at least one report are Zimbabwe, Sudan, Rwanda, Algeria, Egypt and the Democratic Republic of the Congo. Again, very little emphasis should be placed on which or the types of that States did or did not manage to submit a report as they again span a wide variety of political and economic regimes. The non-submission of reports can therefore be said to not be common or specific to or only affecting one type of African political regime or States with certain levels of economic development.<sup>187</sup>

The number of overdue reports gives a more complete picture of States' compliance with the obligation to submit reports as report due dates are based on when a State becomes party to the treaty. For example, Rwanda is recorded in table two as having submitted four reports but table three<sup>188</sup> indicates that it actually owes the CESCR

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<sup>186</sup> See Table 2. Table produced from data obtained from United Nations Treaty Body Database, <http://www.unhchr.ch/tbs/doc.nsf>, last accessed 19 April 2007

<sup>187</sup> This is to be discussed further in chapter four using Tables 7 through 9.

<sup>188</sup> Table produced from data obtained from United Nations Treaty Body Database, <http://www.unhchr.ch/tbs/doc.nsf>, last accessed 19 April 2007.

O-On time, L-Late, E-Early, \*-Timeliness of submission unclear.

four reports. Looking at table two alone would incorrectly indicate the 58 per cent that did submit reports to the CESCER did so completely and on time. Table three, which gives data on the number of overdue reports thus places the data in table two into a bit better perspective. It makes very evident that though many States are recorded as having submitted a report they are still overdue by just as many if not more. This is due primarily to the fact that many States begin the reporting process but do not complete it. Moreover, tables one, two, and three overwhelmingly indicate that the vast majority of African States are yet to fully or even partially fulfil the obligation to submit a report within two years of signature to the Covenant. They further indicate that even if they have submitted a report 99 percent of them do so late. To be duly noted also is that only eight and a half per cent of States are on track with their schedule for the submission of their reports.<sup>189</sup> Of these better complying States are: Zambia, Morocco, Benin, and Libyan Arab Jamahiriya which have no overdue reports and have kept on track with their report submission schedules.

It is contended that this issue of non-submission and the incompleteness of the State reporting process by African States is an indication of the significance of the effect of political will on an already problematic benchmarking system. By not submitting reports and or not completing the reporting process, African States are not able to dialogue with the committee and engage with its recommendations through the concluding observations procedure. They therefore lose out on a very essential aspect of the benchmarking feature of the State reporting system as they not only are unable to reflect on their progress with the realization of ESCRs but also, are not able to, as they attempt to implement and

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<sup>189</sup> Only four of the 47 signatories are on track with their submission schedules those are: Zambia, Morocco, Benin, and Libyan Arab Jamahiriya.

realize them, set benchmarks which they (and the CESCER) can use to measure their progress and compliance with the terms of the treaty. It is therefore maintained that while there have been changes to the system to allow for research and investigation into a particular situation by the committee as well as shadow reports, this is still more the exception than the rule and, more importantly, do not involve the State itself. The committee is more often than not overworked, backlogged and pressed for time. And, though these are not problems that affect or are specific to only African States, it is exacerbated by the fact that it thus requires significant political will on the part of States fully engage with the CESCER and the national benchmarking process that the State reporting system is to facilitate.

Producing State reports is costly<sup>190</sup>. Most African States have ratified at least one other UN Treaty dealing with human rights<sup>191</sup> and are therefore obliged to produce reports for those treaties as well. The process for submission can therefore become a cumbersome, highly time consuming and resource intensive process and therefore requires a significant commitment on the part of the State to expend the fiscal, human and technical resources required to fully engage with the process. With the depth of questioning set forth in the new guidelines for state reporting<sup>192</sup> many States will require experts to aid in research, data capturing and analysis, and the overall assembly of the report, which requires a significant amount of political will to fund, facilitate and undertake.

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<sup>190</sup> The production of the report entails the enlistment of human, technical, and financial resources.

<sup>191</sup> UN Treaty Body Database, <http://www.unhchr.ch/tbs/doc.nsf>.

<sup>192</sup> Revised general Guidelines Regarding the Form and Contents of Reports to be Submitted by States Parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights, 17 June 1991, [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.1991.1.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/E.C.12.1991.1.En?Opendocument)

States, such as Liberia, which are emerging out of long civil wars and could use the reporting system as a means of attacking and addressing its overwhelming social and economic issues, have not been able to date to produce a state report because of the vast challenges that plague post civil war societies. For such societies, regaining stability through the opening of schools, hospitals and the re-establishment of electricity and water supplies are tantamount on their agendas. Though these priorities coincide with the object and purpose of the Covenant, they still require significant demonstration and application of political commitment towards domesticating international benchmarks set by the Covenant and the CESCRR as well as the creation of national benchmarks by engaging and completing the State reporting procedure.

### **3.4 CONCLUSION**

Chapter three has looked at the general role of and issues associated with State reporting as a benchmarking process. This served to assess the general effectiveness of the State reporting system and set the stage for the discussion on State reporting and national benchmarking within the African context. It then looked briefly at the role of adoption and ratification of the Covenant within the African context to establish the economic, social and political relevance and role of the ICESCR in Africa. African States' compliance with the State reporting procedure and, consequently, the level of their engagement with the CESCRR in the establishment of their national benchmarks was then assessed and discussed. It was concluded that the State reporting process requires significant political will to engage and remain engaged with. Additionally, African States are not reporting and hence are not engaging with the CESCRR. It is therefore inferred that



national benchmarking (State reporting) which ought to function as a tool towards the implementation and realization of ESCRS, is not occurring in the vast majority of States across Africa due to a lack of political will.

To conclude, the study proves this by looking at comparable English speaking Caribbean States' with similar levels of economic development, their compliance with the obligation under the Covenant to submit periodic reports, and their HDI rankings. The objective of the comparability between African and Commonwealth Caribbean States is to test the reasonableness of the assertion of chapters two and three that current benchmarks and benchmarking processes towards the realization of ESCRs are significantly impacted by political will and not the level of resources available to the State.

## CHAPTER 4: COMPARISON BETWEEN AFRICAN AND CARIBBEAN COMMONWEALTH STATES: ECONOMIC RESOURCE AVAILABILITY, STATE REPORTING COMPLIANCE AND HUMAN DEVELOPMENT

### 4.1 INTRODUCTION

African leaders have been widely cited as notoriously disregarding of the importance of the protection and enforcement of human rights and consequently the primary agents behind the gross non-realization of ESCRs in Africa.<sup>193</sup> Development data from the UNDP and World Bank consistently rank African States among the lowest in terms of their levels of human development.<sup>194</sup> Many African leaders, however, maintain that their primary constraint in this regard is the severe lack of resources.<sup>195</sup> In as much as this is recognized by the Committee, its General Comments consistently reiterate that obligations under the Covenant exist independently of the availability of resources and that ESCRs can be realized in a variety of political contexts.<sup>196</sup> As has been maintained in chapter two, benchmarks set by earlier General Comments and the Limburg Principles do not aptly tease out the critical dynamic between the obligation to fully realize the terms of the Covenant and the crisis of available resources. Later General Comments, in

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<sup>193</sup> See Human Rights Watch, 2001 World Report: Africa At <http://www.hrw.org/Wr2k1/Africa/Index.Html> And Amnesty International Report (2007): African Union Summit In Accra: Time For African Leaders To Make Human Rights Count And Implement Their Promises And Commitments at: <http://web.amnesty.org/library/index/engior630032007>.

<sup>194</sup> see undp's indicators by tables: monitoring human development: enlarging people's choices at [http://hdr.undp.org/hdr2006/statistics/indicators/indicators\\_table.cfm](http://hdr.undp.org/hdr2006/statistics/indicators/indicators_table.cfm) for water, sanitation, nutrition status, life expectancy and human poverty indices for africa.

<sup>195</sup> Odinakulu, C.A., "Analysis of Paralysis or Paralysis by Analysis: Implementing Economic, Social and Cultural Rights Under the African Charter of People's and Human Rights", (2001), vol. 23, *HumanRights Quarterly*, 327-369; Leopold Senghor, the founder of Senegal Comment that "human rights begin with breakfast" "became the slogan of some developing country governments, who argued that a new international economic order was a prerequisite for the adequate realisation of human rights." From: Plant, R. "Human rights, decent work and the role of labour standards in international development policies a concept paper on rights-based thinking, as applied to the ilo's standard-setting activities" at: <http://training.ilo.org/decentwork/staffconf2002/presentations/planthrlabour02.doc>

<sup>196</sup> see general comment no. 3, para 1 and general comment no. 4, para 10.

addressing this issue, direct State parties to courses of action which are significantly dependent on political will. This conceptual and practical dilemma thus raises the question of the relative role of resources versus State political will in the realization of ESCRs. It was concluded in both chapters three and two that political will played a far greater role in Africa than did the constraint of resources. In order to prove this, this chapter will compare levels of compliance with the State reporting procedure and levels of human development (as is indicated by the HDI) between African and Commonwealth Caribbean States of similar levels of available economic resources.

#### **4.2 HUMAN DEVELOPMENT AS AN INDICATOR OF THE REALIZATION OF ESCRs**

A 2006 UNDP Human Development report used its Human Development Index (HDI) to rank signatories of the ICESCR.<sup>197</sup> Of particular importance is that a number of factors considered by and accounted for in the HDI are reflective of many of the rights, objectives and standards espoused in the ICESCR. This index is thus taken here to be a robust assessment of the state of human development of signatories to the Covenant and hence an adequate measurement of their realization of ESCRs. Among the top twenty ranked States are Norway at number one, Spain at 19, Switzerland at ten, Australia at four, Canada at eight and Japan at nine.<sup>198</sup> The last twenty-five States on the list,

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<sup>197</sup> “The HDI – human development index – is a summary composite index that measures a country's average achievements in three basic aspects of human development: longevity, knowledge, and a decent standard of living. Longevity is measured by life expectancy at birth; knowledge is measured by a combination of the adult literacy rate and the combined primary, secondary, and tertiary gross enrolment ratio; and standard of living by GDP per capita (PPP US\$).” Human Development Reports, [http://hdr.undp.org/reports/global/2003/indicator/indic\\_242\\_1\\_1.html](http://hdr.undp.org/reports/global/2003/indicator/indic_242_1_1.html).

<sup>198</sup> See Table 4. Table 4 from UNDP Indicators by Tables: Monitoring Human Development Enlarging People's Choices at [http://hdr.undp.org/hdr2006/statistics/indicators/indicators\\_table.cfm](http://hdr.undp.org/hdr2006/statistics/indicators/indicators_table.cfm)  
Source :UN (United Nations). 2006d. “Multilateral Treaties Deposited with the Secretary- General.” New York. [<http://untreaty.un.org>]. Accessed August 2006.

however, are only African States. They include: Sierra Leone in last position at 175, Gambia at the top of the last 25 at 151 and Nigeria just below that at 152. Benin and Zambia (two of the few states complying with their reporting obligation) fall in at 159 and 163 respectively and Libyan Arab Jamahiriya and Morocco (which are also on schedule for the submission of their periodic reports to the committee) fall in at 61 and 126 respectively. It is glaringly obvious from this table that the majority of African States currently lag behind in the realization of ESCRS and, moreover, that the real effects of the Covenant are yet to be felt by the majority of people on the continent.

### **4.3 COMPARISON BETWEEN AFRICAN AND CARIBBEAN COMMONWEALTH STATES: ECONOMIC RESOURCE AVAILABILITY, STATE REPORTING COMPLIANCE AND HUMAN DEVELOPMENT**

#### **4.3.1 Comparison of Available Economic Resources**

The basic objective of the comparability between African and Commonwealth Caribbean States is to test the reasonableness of the assertion of chapters two and three that current benchmarks and benchmarking processes towards the realization of ESCRs are not as impacted by the level of resources available to the State but rather political will.

Tables five<sup>199</sup> and six<sup>200</sup> present estimates of African and Commonwealth Caribbean States' per capita GDPs respectively. It can be seen from these tables that the GDP levels of Caribbean States fall between the mid to top range of GDP levels for

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The table includes states that have signed or ratified at least one of the six human rights instruments. Information is as of August 2006.

<sup>199</sup> Source: International Monetary Fund, World Economic Outlook Database, April 2007 at: <http://www.imf.org/external/pubs/ft/weo/2007/01/data/index.aspx>.

<sup>200</sup> Ibid.

African States. The Bahamas, the Commonwealth Caribbean State with the highest per capita GDP at 20,507.18 is just above Equatorial Guinea, the African State with the highest per capita GDP at 20,322.06. Guyana and Jamaica, the Commonwealth Caribbean States with the lowest per capita GDPs, fall just below Morocco which has a per capita GDPs of 4,955.67. This might raise the expectation that Caribbean countries would be more compliant with the State reporting procedure, have higher levels of human development and thus be farther ahead with the realization of ESCRs, simply because they have, on average, more available economic resources. It is, however, argued that there appears to be no strong relationship between available economic resources (as measured by GDP PPP) and States' compliance with the State reporting procedure.

Table seven<sup>201</sup> presents per capita GDP Ranks for African States and the number of reports they have submitted to the CESCR. It has been previously established in chapter three of the study that the non-submission of reports is not common to any one type of African State as the States that are yet to submit reports to the Committee span a wide variety of political and economic regimes. Tables two and three indicated this by demonstrating that the vast majority of African States simply do not submit reports to the Committee and, if they do submit reports, an even more overwhelming number do so late and or do not complete the reporting process.

On close analysis of the data presented in table seven, it therefore becomes apparent that there is also not a strong relationship levels of resource availability (as is indicated by per capita GDP rank) and levels of compliance with the obligation to submit

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<sup>201</sup> Source: United Nations Treaty Body Database, <http://www.unhchr.ch/tbs/doc.nsf> and CIA World Factbook GDP (PPP) World Rank Order at: <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2004rank.html>.

reports across Africa. Zambia, ranked 212<sup>th</sup> in the per capita GDP rankings<sup>202</sup>, has submitted two reports and is also not overdue.<sup>203</sup> Likewise is Benin which has a world per capita GDP ranking of 209<sup>204</sup>. Of the States with higher per capita GDP world ranks are Equatorial Guinea, which has never submitted a report and is overdue by four, Mauritius which is ranked at 73, has submitted two reports but is overdue by three and Algeria, which is ranked at 110, also has submitted two reports but is also overdue by three. There is therefore no visible pattern to suggest that States with more available resources are more compliant with the obligation to submit periodic reports. Nor can it be suggested that the data indicates that “poorer” States are less compliant. The only State where it could be said that there is a link between level of available resources and compliance with the obligation to submit reports is Libyan Arab Jamahiriya which is the second highest African ranked country (after Equatorial Guinea) on the per capita GDP world ranking at 81<sup>205</sup> and has submitted a total of three reports and is overdue by none.<sup>206</sup> As this is the only of the 47 African States assessed where the two factors converge, it can be firmly stated that the data in table seven overwhelmingly suggests that there is no strong relationship between levels of available resources and compliance with the obligation to submit periodic reports to the CESC across Africa.

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<sup>202</sup> Ibid.

<sup>203</sup> See tables two and three

<sup>204</sup> CIA World Factbook GDP (PPP) World Rank Order at: <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2004rank.html>

<sup>205</sup> Ibid.

<sup>206</sup> See tables two and three.

#### 4.3.2 Comparison of State Reporting Compliance

Table eight<sup>207</sup> tests the strength of this assertion even further by comparing Commonwealth Caribbean States' periodic reports submitted and overdue and their per capita GDP levels with that of African States'.

It must first be said that of the eleven Commonwealth Caribbean States only seven are parties to the Covenant.<sup>208</sup> There is clearly a higher proportion of Caribbean States that are not parties to the Covenant than those that are not in Africa.<sup>209</sup> Though the Bahamas, St. Kitts and Nevis, Antigua and Barbuda, and St. Lucia are not parties to the Covenant they are included in order to present a more balanced and comprehensive view of the relationship between the availability of economic resources, compliance with the submission of periodic report and the level of human development in the Caribbean.

Of the seven Commonwealth Caribbean States that are parties to the Covenant only two have never submitted reports to the Committee. Of the eleven African States chosen, ten have ratified the Covenant<sup>210</sup> and are thus under the obligation to submit periodic reports. Of this ten, only five have ever submitted reports to the Committee. That is, 28 per cent of Commonwealth Caribbean States have never complied with the obligation to submit a periodic report to the CESCRC while there is staggering 50 per cent rate of non-compliance by counterpart African States. The data thus clearly suggests that

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<sup>207</sup> Source: United Nations Treaty Body Database, <http://www.unhchr.ch/tbs/doc.nsf> and CIA World Factbook GDP (PPP) World Rank Order at: <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2004rank.html>.

\*Denotes non-signatory to the Covenant

\*\*Denotes Signatory to the Covenant; States that are not otherwise distinguished have ratified the Covenant.

<sup>208</sup> United Nations Treaty Body Database at: <http://www.unhchr.ch/tbs/doc.nsf>.

<sup>209</sup> Among those African States that have neither signed nor ratified the Covenant are: Botswana, the Comoros, Mozambique, and Sao Tome and Principe and South Africa has signed but not ratified the Covenant. United Nations Treaty Body Database at: <http://www.unhchr.ch/tbs/doc.nsf>.

<sup>210</sup> The eleventh State, South Africa, has signed the Covenant.

Caribbean States are generally more compliant with this obligation. It can be accordingly extrapolated that there is therefore a larger proportion of Caribbean States are engaged with the reporting process and the Committee and therefore national benchmarking processes. Though Caribbean States are generally more engaged with State reporting, it can also be seen from the table that compliance *between* the regions can be said to not necessarily be affected by the availability of economic resources. More important to this investigation however, is that levels of compliance run across the spectrum of States *within* their respective region. Thus, while Jamaica, having the lowest per capita GDP has only submitted two reports and is overdue by one, Trinidad at the higher end of the per capita GDP spectrum, has likewise only submitted two reports and is also overdue by one. This is also evident across the selected African countries. Angola, which is at the bottom end of the per capita GDP spectrum, has never submitted a report and is overdue by three, is no more compliant with the obligation to submit periodic reports than Equatorial Guinea which, at the very top of the GDP spectrum, has also never submitted a report and also owes three. It would therefore appear from the data that levels of compliance with the obligation to submit periodic reports are not significantly impacted by the level of available economic resources.



### 4.3.3 Comparison of Available Economic Resources and Levels of Human Development

The data in table nine<sup>211</sup> indicates that Caribbean States in general rank higher in the human development index than African States of comparable economic resources. Whereas Caribbean States range from 52 to 92 on the HDI, comparable African States range from as low as 47 to as high as 160. More importantly is that there are only two African States that are ranked below 100, Seychelles at 47 and Mauritius at 62 while all Commonwealth Caribbean States are ranked below 100. This not only indicates the, on average, lower levels of human development in Africa but that there is also a much wider range in levels of human development between the States. The most striking feature of the data is that though Caribbean States rank equally low on the per capita GDP ranking index, their ranking is generally much higher than comparable African States on the HDI. For example, St. Vincent and the Grenadines' per capita GDP rank is 155 while its HDI rank is 88 in comparison, Angola ranks 142 in terms of GDP and 161 on the HDI. Also is Grenada whose GDP rank is 147 but has an HDI rank of 85 while Morocco has a GDP rank of 140 but an HDI rank of 123.

There is thus not only a marked difference in level of human development between the two regions but also a significant difference between States, with similar levels of per capita GDP and corresponding levels of human development between the two regions.

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<sup>211</sup> Source: CIA World Factbook GDP (PPP) World Rank Order at: <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2004rank.html> and International Monetary Fund, World Economic Outlook Database, April 2007 at: <http://www.imf.org/external/pubs/ft/weo/2007/01/data/index.aspx>

#### 4.4 CONCLUSION

The above discussed data<sup>212</sup> indicates that Caribbean States are more engaged with the Committee. As a greater proportion of them are reporting, they are consequently in a position to be assisted by the Committee in the development of their internal benchmarks and, through this, more able to achieve the realization of ESCRs. Their relatively higher ranking on the HDI might be indicative of the result of this process. On the other hand, African States demonstrate chronic levels of non-compliance with similar levels of economic resources. The implication of this is that they are less engaged with the Committee and as such demonstrate lower levels of the realization of ESCRs which is reflected in their generally lower rankings on the HDI. These findings thus speak to the aforementioned appeals of African leaders to the paucity of resources as the main constraint to the realization of ESCRs. Caribbean States appear to have much higher levels of the realization of ESCRs with comparable levels of economic resources. This, therefore would seem to indicate that the true constraint to the realization of ESCRs in Africa lies elsewhere. Furthermore, while fewer Caribbean States have signed or ratified the Covenant the data demonstrates that they have higher levels of the realization of ESCRs as is reflected in their relatively high HDI rankings. Ratification or signature to the Covenant therefore cannot be said to indicate the actual level of States' political will to fully realize ESCRs.

What these findings firmly underscores is the importance of the domestication of ESCRs through benchmarking processes which, as has been demonstrated, are not as limited by the availability of resources. This chapter has demonstrated that

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<sup>212</sup> See Table 8.

Commonwealth Caribbean States with similar levels of economic resources are performing better at reporting and therefore engage more with the CDESCR in creating national benchmarks than African States have been. It therefore appears from this that African States have great difficulty engaging with benchmarking processes, as are established by the Covenant and its expounding documents. As has been shown, these processes go beyond the issue of resource constraints and may therefore be more an issue of political will. It is therefore concluded that the effectiveness of current benchmarks and benchmarking processes which measure positive State obligations towards the realization of ESCRS in Africa is, in fact, significantly impacted by political will.

## **CHAPTER 5: CONCLUSION: FINDINGS AND IMPLICATIONS FOR THE REALIZATION OF ESCRs IN AFRICA**

It has been shown that there is an overwhelming majority of African States that are party to the ICESCR. Despite this, conditions of humanity continue to plummet and persistently sing the hope and promise of the improvement of quality of life that the Covenant embodies. The question arises as to what reasons underlie the consistent under-realizations of ESCRs in Africa. It has often been maintained that the realization of ESCRs is highly resource intensive and therefore resource stricken or developing nations (such as those in Africa) may not be in a position to undertake their full realization. Many in the international community have, however, cited a lack of commitment as reason for the gross under-realization of ESCRs in Africa. The study therefore aimed to explore this question by examining the relative importance of resources and political will in States' engagement with the benchmarks and benchmarking processes established by the ICESCR and the CESCR.

It was first maintained that it is not the nature of ESCRs per se but rather that the vague, broad and imprecise manner in which the Covenant and some of its earlier expounding documents which establish the terms and provisions of the benchmarks require significant levels of political will to fully engage with them. This is a significant factor affecting the benchmarks and ultimately the realization of ESCRs. It is, however, conceded that as the first documents pronouncing on these rights and their ensuing obligations, many of the preoccupations and debates of the drafting process survived through to the Covenant's completion. Their primary strength therefore, is that they

establish the rights and begin the grounding process for their interpretation, implementation and hence realization.

Chapters two and three set the groundwork for the assertion that benchmarks and benchmarking processes, and ultimately the realization of ESCRs in Africa, is significantly impacted by political will and less so by severe constraints in resources. It was shown that both the benchmarks set by the Covenant and its expounding documents and the benchmarking process of State reporting require significant levels of political will for States to engage and remain engaged with them.

Despite that the later General Comments of the CESCR, add substantial details and depth to the rights themselves as well as the standards for measuring States' obligations towards their realization they suggest that States look to external guidelines as sources of right specific benchmarks and recommend that States engage with bodies such as the IMF and World Bank for assistance with the preparation of plans of action and their subsequent implementation. It not only requires significant political will to engage with and thence domesticate international plans of action (for example on health and housing) but also to do so with bodies such as the IMF with which many developing countries have had traumatic and or problematic relationships. Thus, not only are these benchmarks vague and imprecise and therefore require significant political will on the part of State parties to interpret and domesticate, they also, because they point States to other guidelines and international bodies as sources of or as benchmarks themselves, require further political will to engage on such a level.

It was argued that the issues that are inherent to the State reporting process are further exacerbated in the African context by a lack of political will. It was shown that

the majority of African States do not submit reports and, if they do, an even larger number do so late or do not completing the reporting process at all. The implication of this is that the majority of African States do not engage with the CESCER to develop national benchmarks towards the implementation and realization of ESCRs. It was thus concluded that national benchmarking through State reporting, within the African context, is significantly impacted by the fact that it requires significant political will on the part of State parties to submit reports and consistently engage with the CESCER.

These assertions were supported by looking at comparable English speaking Caribbean States' with similar levels of economic development, their compliance with the obligation under the Covenant to submit periodic reports, and their HDI rankings. It is shown that, the issue of the non-realization of ESCRs in Africa is thus not specific to any one type of economic or political regime. It is ubiquitous in Africa. More importantly, it is shown that economic resources do not play a significant role in the level of human development and compliance with State reporting in both African and Commonwealth Caribbean States. From this is concluded that political will plays a more significant role in the level of African States' engagement with benchmarking processes and ultimately the realization of ESCRs. The implication of this is that the under-realization of ESCRs in Africa is more the result of a lack of political will to enforce, implement and protect them. It follows therefore that to improve the levels of realization of ESCRs in Africa, the issue of political will must be addressed. Political motivation is, however, difficult to engender particularly by bodies such as the CESCER which do not have adjudicatory powers. In order to improve the level of the realization of ESCRs in Africa it is therefore

necessary address the benchmarks and benchmarking process particularly where they create the need for significant levels of political motivation on the part of State parties.

To that end, it is suggested that where the committee continues to expound the nature and scope of ESCRs and the obligations under the Covenant towards their realization through the production of General Comments, it should provide specific, measurable, universally recognizable standards that are framed in positive terms. Where the Committee points to international sources as guidelines and benchmarks which have been established, it should do more than merely refer to the documents as exemplars. It should ensure that the Comments include (substantively) the issues (raised by these external documents) it believes to be most critical to the interpretation and implementation of the benchmarks and, ultimately the realization of ESCRs.

Where State reporting is concerned, the Committee should consider allowing State input in, review of and or contributions to shadow reports from NGOs. It should also consider oral reports, particularly for the follow up and concluding observations procedures. This would potentially, where States do not submit reports or complete the reporting process, include them and keep them engaged with the reporting and thereby national benchmarking process. This would also aid in the issues of resource constraints and backlog that the committee faces as there would be a significantly lower volume of paper work to sift and would also be less time consuming.

As has been shown the issue of available resources available is less significant a factor in the realization of ESCRs. With adjustments to benchmarking processes such that they are not as reliant on political will, the realization of ESCRs in Africa may prove to not be as impossible a feat as it is now contended or seems.

<p align="center"><b>Table 1</b></p> <p align="center"><b>African State Parties to the ICESCR</b></p>
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## Appendix

	<b>State Parties to ICESCR</b>	<b>Entry Force</b>	<b>Into Rec. of Instr.</b>	<b>Sign. Date</b>
1.	Algeria*	12/12/89	12/09/89	
2.	Angola	10/04/92	10/01/92	
3.	Benin	12/06/92	12/03/92	
4.	Burkina Faso	04/04/99	04/01/99	
5.	Burundi*	09/08/90	09/05/90	
6.	Cameroon*	27/09/84	27/06/84	
7.	Cape Verde	06/11/93	06/08/93	
8.	Central African Republic*	08/08/81	08/05/81	
9.	Chad	09/09/95	09/06/95	
10.	Congo*	05/01/84	05/10/83	
11.	Côte d'Ivoire	26/06/92	26/03/92	
12.	Democratic Republic of the Congo*	01/02/77	01/11/76	
13.	Djibouti	05/02/2003	05/11/2002	
14.	Egypt*	14/04/82	14/01/82	04/08/67
15.	Equatorial Guinea*	25/12/87	25/09/87	
16.	Eritrea	17/07/2001	17/04/2001	
17.	Ethiopia	11/09/93	11/06/93	
18.	Gabon*	21/04/83	21/01/83	
19.	Gambia*	29/03/79	29/12/78	
20.	Ghana	07/12/2000	07/09/2000	07/09/2000
21.	Guinea*	24/04/78	24/01/78	28/02/67
22.	Guinea-Bissau	02/10/92	02/07/92	
23.	Kenya*	03/01/76	01/05/72	
24.	Lesotho	09/12/92	09/09/92	
25.	Liberia	22/12/2004	22/09/2004	18/04/67
26.	Libyan Arab Jamahiriya*	03/01/76	15/05/70	
27.	Madagascar*	03/01/76	22/09/71	14/04/70
28.	Malawi	22/03/94	22/12/93	
29.	Mali*	03/01/76	16/07/74	
30.	Mauritania	17/02/2005	17/11/2004	
31.	Mauritius*	03/01/76	12/12/73	
32.	Morocco*	03/08/79	03/05/79	19/01/77
33.	Namibia	28/02/95	28/11/94	
34.	Niger*	07/06/86	07/03/86	
35.	Nigeria	29/10/93	29/07/93	
36.	Rwanda*	03/01/76	16/04/75	
37.	Senegal*	13/05/78	13/02/78	06/07/70
38.	Seychelles	05/08/92	05/05/92	
39.	Sierra Leone	23/11/96	23/08/96	
40.	Somalia*	24/04/90	24/01/90	



41.	Sudan*	18/06/86	18/03/86	
42.	Swaziland	26/06/2004	26/03/2004	26/03/2004
43.	Togo*	24/08/84	24/05/84	
44.	Uganda*	21/04/87	21/01/87	
45.	United Republic of Tanzania*	11/09/76	11/06/76	
46.	Zambia*	10/07/84	10/04/84	
47.	Zimbabwe*	13/08/91		

**Table 2**  
**Reports Submitted by African States to the CESC**

State Party to ICESCR	Reports Submitted	Date(s) of Submission
Algeria	2	27/09/1994 (L); 24/05/2000 (L)
Angola	0	
Benin	2	05/02/2001(L); 19/12/2006(E)
Burkina Faso	0	
Burundi	0	
Cameroon	2	14/4/1987(L); 2705/1997(L)
Cape Verde	0	
Central African Republic	0	
Chad	0	
Congo	0	
Côte d'Ivoire	0	
Democratic Republic of the Congo	2	3/2/1987(L); 18/6/1984 (L)
Djibouti	0	
Egypt	1	20/11/1997(L)
Equatorial Guinea	0	
Eritrea	0	
Ethiopia	0	
Gabon	0	
Gambia	1	18/05/1994*
Ghana	0	
Guinea	1	10/05/1996 (L)
Guinea-Bissau	0	
Kenya	2	2/08/1993 (L); 07/07/2006(L)
Lesotho	0	
Liberia	0	
Libyan Arab Jamahiriya	3	23/09/1981*; 15/06/1991(L); 04/04/2004(L)
Madagascar	3	12/11/1980*; 31/05/1985*; 12/07/1984*
Malawi	0	
Mali	1	30/11/1994*
Mauritania	0	
Mauritius	2	17/05/1994(L); 24/08/1994(L)
Morocco	3	16/03/1993(L); 27/08/1998(L); 27/10/2004(O)
Namibia	0	
Niger	0	
Nigeria	1	07/02/1996(L)
Rwanda	4	03/10/1983*; 27/09/1985*; 07/09/1987*; 09/07/11/1987*
Senegal	4	15/04/1981*; 28/04/1982*;14/10/1992*;28/09/1999(L)
Seychelles	0	
Sierra Leone	0	
Somalia	0	
Sudan	1	08/05/1998(L)
Swaziland	0	
Togo	1	04/05/2001*
Uganda	0	
United Republic of Tanzania	1	10/09/1979*
Zambia	2	2/10/1985*; 29/07/2003(L)
Zimbabwe	1	30/6/1995

**Table 3**  
**Overdue Reports to the CESCER by African States**





















State Party to ICESCR	Reports Overdue
Algeria	3
Angola	3
Benin	0
Burkina Faso	2
Burundi	3
Cameroon	2
Cape Verde	3
Central African Republic	4
Chad	2
Congo	4
Côte d'Ivoire	3
Democratic Republic of the Congo	4
Djibouti	1
Egypt	3
Equatorial Guinea	4
Eritrea	1
Ethiopia	3
Gabon	4
Gambia	4
Ghana	1
Guinea	4
Guinea-Bissau	3
Kenya	2
Lesotho	3
Liberia	1
Libyan Arab Jamahiriya	0
Madagascar	4
Malawi	3
Mali	4
Mauritania	Status unclear
Mauritius	3
Morocco	0
Namibia	2
Niger	4
Nigeria	2
Rwanda	4
Senegal	1
Seychelles	3
Sierra Leone	2
Somalia	3
Sudan	2
Swaziland	1
Togo	0
Uganda	4
United Republic of Tanzania	4
Zambia	0
Zimbabwe	2

**Table 4<sup>1</sup>**  
**HDI Rankings of State Parties to the ICESCR**

HDI Rank	Country	Signature/Ratification of ICESCR
1	Norway	●
2	Iceland	●
3	Australia	●
4	Ireland	●
5	Sweden	●
6	Canada	●
7	Japan	●
8	United States	○
9	Switzerland	●
10	Netherlands	●
11	Finland	●
12	Luxembourg	●
13	Belgium	●
14	Austria	●
15	Denmark	●
16	France	●
17	Italy	●
18	United Kingdom	●
19	Spain	●
20	New Zealand	●
21	Germany	●
22	Hong Kong, China (SAR)	..
23	Israel	●
24	Greece	●
25	Singapore	..
26	Korea, Rep. of	●
27	Slovenia	●
28	Portugal	●
29	Cyprus	●
30	Czech Republic	●
31	Barbados	●
32	Malta	●
33	Kuwait	●
34	Brunei Darussalam	..
35	Hungary	●
36	Argentina	●
37	Poland	●
38	Chile	●
39	Bahrain	..
40	Estonia	●
41	Lithuania	●
42	Slovakia	●
43	Uruguay	●

HDI Rank	Country	Signature/Ratification of ICESCR
44	Croatia	●
45	Latvia	●
46	Qatar	..
47	Seychelles	●
48	Costa Rica	●
49	United Arab Emirates	..
50	Cuba	..
51	Saint Kitts and Nevis	..
52	Bahamas	..
53	Mexico	●
54	Bulgaria	●
55	Tonga	..
56	Oman	..
57	Trinidad and Tobago	●
58	Panama	●
59	Antigua and Barbuda	..
60	Romania	●
61	Malaysia	..
62	Bosnia and Herzegovina	●
63	Mauritius	●
64	Libyan Arab Jamahiriya	●
65	Russian Federation	●
66	Macedonia, TFYR	●
67	Belarus	●
68	Dominica	●
69	Brazil	●
70	Colombia	●
71	Saint Lucia	..
72	Venezuela, RB	●
73	Albania	●
74	Thailand	●
75	Samoa (Western)	..
76	Saudi Arabia	..
77	Ukraine	●
78	Lebanon	●
79	Kazakhstan	●
80	Armenia	●
81	China	●
82	Peru	●
83	Ecuador	●
84	Philippines	●
85	Grenada	●
86	Jordan	●
87	Tunisia	●

HDI Rank	Country	Signature/Ratification of ICESCR
88	Saint Vincent and the Grenadines	●
89	Suriname	●
90	Fiji	..
91	Paraguay	●
92	Turkey	●
93	Sri Lanka	●
94	Dominican Republic	●
95	Belize	○
96	Iran, Islamic Rep. of	●
97	Georgia	●
98	Maldives	..
99	Azerbaijan	●
100	Occupied Palestinian Territories	..
101	El Salvador	●
102	Algeria	●
103	Guyana	●
104	Jamaica	●
105	Turkmenistan	●
106	Cape Verde	●
107	Syrian Arab Republic	●
108	Indonesia	●
109	Viet Nam	●
110	Kyrgyzstan	●
111	Egypt	●
112	Nicaragua	●
113	Uzbekistan	●
114	Moldova, Rep. of	●
115	Bolivia	●
116	Mongolia	●
117	Honduras	●
118	Guatemala	●
119	Vanuatu	..
120	Equatorial Guinea	●
121	South Africa	○
122	Tajikistan	●
123	Morocco	●
124	Gabon	●
125	Namibia	●
126	India	●
127	São Tomé and Príncipe	○
128	Solomon Islands	●
129	Cambodia	●
130	Myanmar	..
131	Botswana	..

HDI Rank	Country	Signature/Ratification of ICESCR
132	Comoros	..
133	Lao People's Dem. Rep.	
134	Pakistan	
135	Bhutan	..
136	Ghana	
137	Bangladesh	
138	Nepal	
139	Papua New Guinea	..
140	Congo	
141	Sudan	
142	Timor-Leste	
143	Madagascar	
144	Cameroon	
145	Uganda	
146	Swaziland	
147	Togo	
148	Djibouti	
149	Lesotho	
150	Yemen	
151	Zimbabwe	
152	Kenya	
153	Mauritania	
154	Haiti	..
155	Gambia	
156	Senegal	
157	Eritrea	
158	Rwanda	
159	Nigeria	
160	Guinea	
161	Angola	
162	Tanzania, U. Rep. of	
163	Benin	
164	Côte d'Ivoire	
165	Zambia	
166	Malawi	
167	Congo, Dem. Rep. of the	
168	Mozambique	..
169	Burundi	
170	Ethiopia	
171	Chad	
172	Central African Republic	
173	Guinea-Bissau	
174	Burkina Faso	
175	Mali	

HDI Rank	Country	Signature/Ratification of ICESCR
176	Sierra Leone	●
177	Niger	●



**Table 5**  
**African States**  
**GDP (PPP) Per Capita (USD)**

<b>Country</b>	<b>GDP- PPP (USD) 2006</b>
Equatorial Guinea	20,322.06
Seychelles	17,915.19
Botswana	16,190.21
Mauritius	13,239.93
South Africa	12,795.81
Tunisia	8,898.20
Namibia	8,423.49
Algeria	7,827.34
Cape Verde	7,244.43
Gabon	7,403.44
Morocco	4,955.67
Swaziland	5,244.09
Angola	3,399.47
Sudan	2,729.14
Ghana	2,771.03
Mauritania	2,553.22
Djibouti	2,515.17
Guinea	2,474.29
Cameroon	2,199.26
Zimbabwe	2,436.58
Gambia, The	2,136.41
Lesotho	2,189.31
Senegal	2,007.19
Comoros	2,038.94
São Tomé and Príncipe	1,669.47
Côte d'Ivoire	1,699.37
Chad	1,770.34
Uganda	1,625.58
Togo	1,588.68
Mozambique	1,499.75
Congo, Republic of	1,457.17
Burkina Faso	1,395.83
Rwanda	1,405.94
Benin	1,407.99
Kenya	1,340.54
Mali	1,300.04
Nigeria	1,213.26
Central African Republic	1,198.15
Zambia	1,082.93
Liberia	1,041.77
Ethiopia	1,044.42
Eritrea	1,000.83
Madagascar	989.472
Niger	950.525

Sierra Leone	887.854
Congo, Democratic Republic of	849.674
Tanzania	801.343
Guinea-Bissau	774.46
Malawi	705.937
Burundi	679.913

**Table 6**  
**Commonwealth Caribbean States**  
**GDP (PPP) Per Capita (USD)**

<b>Country</b>	<b>GDP PPP 2006</b>
The Bahamas	20,507.18
Barbados	18,856.55
Trinidad and Tobago	17,451.22
St. Kitts and Nevis	17,523.28
Antigua and Barbuda	13,908.64
Grenada	9,255.21
St. Vincent and the Grenadines	8,090.87
St. Lucia	7,140.61
Dominica	6,764.30
Guyana	4,851.29
Jamaica	4,482.19

**Table 7**  
**African State Reports Submitted, Overdue**  
**and their GDP PPP (USD) World Ranks**

<b>African State Party to ICESCR</b>	<b>Reports Submitted</b>	<b>Reports Overdue</b>	<b>GDP PPP World Rank 2006</b>
Algeria	2	3	110
Angola	0	3	142
Benin	2	0	209
Burkina Faso	0	2	204
Burundi	0	3	225
Cameroon	2	2	172
Cape Verde	0	3	121
Central African Republic	0	4	206
Chad	0	2	195
Congo	0	4	202
Côte d'Ivoire	0	3	192
Democratic Republic of the Congo	2	4	225
Djibouti	0	1	210
Egypt	1	3	144
Equatorial Guinea	0	4	4
Eritrea	0	1	216
Ethiopia	0	3	211
Gabon	0	4	116
Gambia	1	4	183
Ghana	0	1	167
Guinea	1	4	177
Guinea-Bissau	0	3	219
Kenya	2	2	207
Lesotho	0	3	168
Liberia	0	1	217
Libyan Arab Jamahiriya	3	0	81
Madagascar	3	4	218
Malawi	0	3	229
Mali	1	4	203
Mauritania	0	Status unclear	169
Mauritius	2	3	73
Morocco	3	0	140
Namibia	0	2	111
Niger	0	4	215
Nigeria	1	2	198
Rwanda	4	4	194
Senegal	4	1	190
Seychelles	0	3	107
Sierra Leone	0	2	220
Somalia	0	3	228
Sudan	1	2	173
Swaziland	0	1	128

United Republic of Tanzania	1	4	222
Togo	1	0	191
Uganda	0	4	186
Zambia	2	0	212
Zimbabwe	1	2	179

**Table 8**  
**Commonwealth Caribbean and African States’**  
**Reports Submitted, Overdue and GDP PPP**

<b>Commonwealth Caribbean States</b>	<b>GDP (PPP) 2006</b>	<b>State Reports Submitted</b>	<b>State reports Overdue</b>	<b>African States</b>	<b>GDP (PPP) 2006</b>	<b>State Reports Submitted</b>	<b>State Reports Overdue</b>
*The Bahamas	20,507.18	N/A	N/A	Equatorial Guinea	20,322.06	0	4
Barbados	18,856.55	3	4	Seychelles	17,915.19	0	3
Trinidad and Tobago	17,451.22	2	1	*Botswana	16,190.21	N/A	N/A
*St. Kitts and Nevis	17,523.28	N/A	N/A	Mauritius	13,239.93	2	3
*Antigua and Barbuda	13,908.64	N/A	N/A	*South Africa	12,795.81	N/A	N/A
Grenada	9,255.21	0	3	Namibia	8,423.49	0	2
St. Vincent and the Grenadines	8,090.87	1	4	Algeria	7,827.34	2	3
*St. Lucia	7,140.61	N/A	N/A	Cape Verde	7,244.43	0	3
Dominica	6,764.30	0	3	Swaziland	5,244.09	0	1
Guyana	4,851.29	1	2	Morocco	4,955.67	3	0
Jamaica	4,482.19	2	1	Angola	3,399.47	0	3

**Table 9**  
**Commonwealth Caribbean and African States' Per Capita**  
**GDP PPP (USD) and HDI Ranks**

<b>Commonwealth Caribbean States</b>	<b>GDP (PPP) Rank 2006</b>	<b>HDI Rank 2006</b>	<b>African States</b>	<b>GDP (PPP) Rank 2006</b>	<b>HDI Rank 2006</b>
*The Bahamas	53	52	Equatorial Guinea	4	116
Trinidad & Tobago	58	57	Mauritius	73	62
Barbados	60	69	**South Africa	76	111
*Antigua and Barbuda	84	59	*Botswana	85	131
*St. Kitts & Nevis	105	51	Seychelles	107	47
Guyana	135	92	Namibia	111	124
*St Lucia	137	71	Algeria	110	102
Jamaica	139	78	Cape Verde	121	106
Dominica	150	68	Swaziland	128	146
Grenada	147	85	Morocco	140	123
St. Vincent & the Grenadines	155	88	Angola	142	161

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